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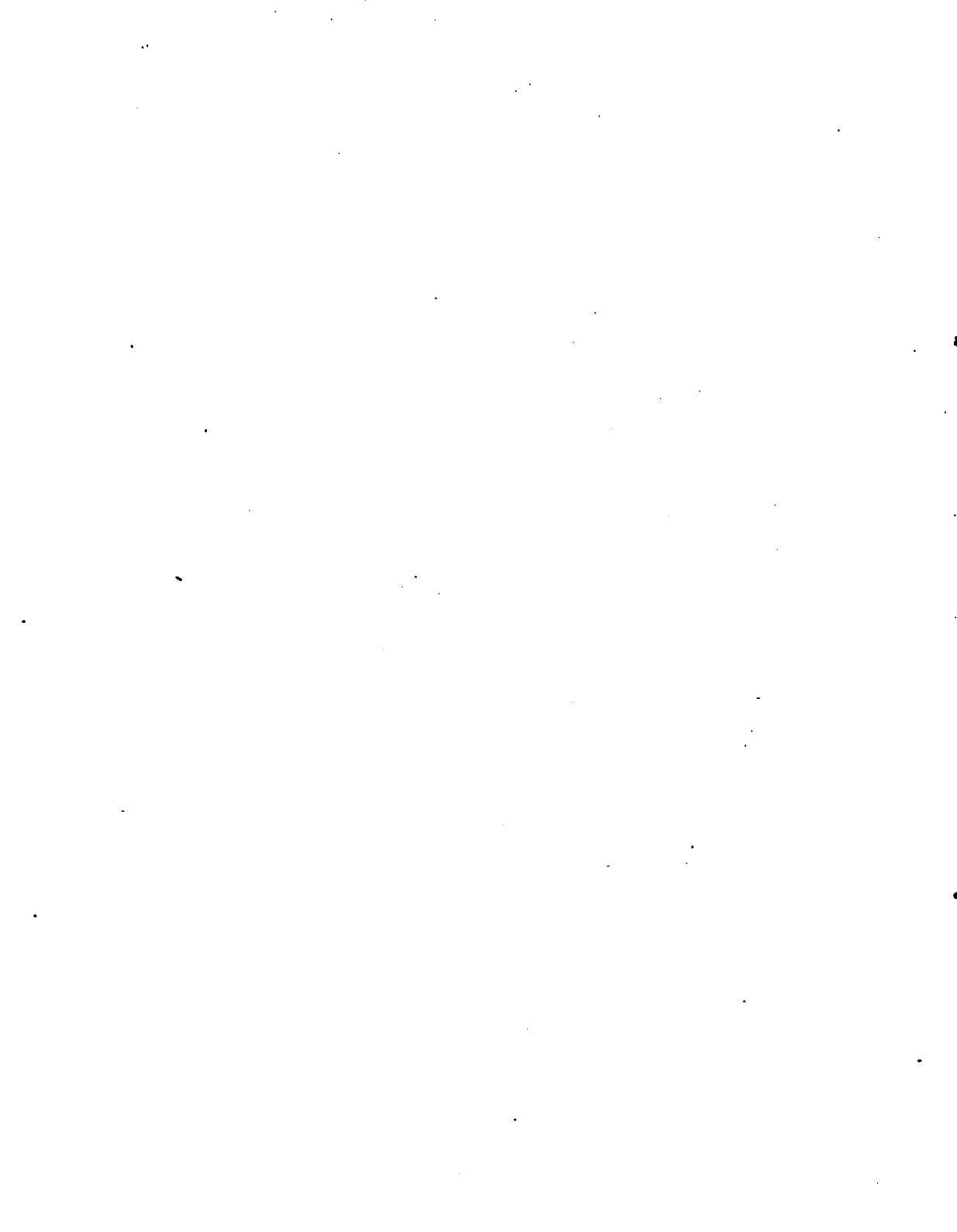


*Hubert Edward Henry, Birmingham.
Longbridge Towers.*

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7 July 1898.





Tom Zolt-97

CHARTERED BY THE
GOVERNMENT OF THE DISTRICT OF COLUMBIA

THE TROUTLAWFORD:

Hawick Burgesses on the Track of Reivers, 1546.

THE
HAWICK TRADITION
OF
1514:

THE TOWN'S COMMON,
FLAG, AND SEAL.

*An enquiry into some of the more interesting and peculiar features
of old Hawick history.*

BY
R. S. CRAIG, ADVOCATE,
—
AND
ADAM LAING, BURGH CHAMBERLAIN.

With Seven Illustrations by TOM SCOTT, A.R.S.A. ; a Title Page
and Colour Sketches by JOHN WALLACE ; and a Map
by JAS. P. ALISON, Architect.

HAWICK : W. & J. KENNEDY.
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PREFACE

IN the present work the writers have endeavoured to place before the reader the result of an independent enquiry into the facts bearing on the time-hallowed tradition of 1514, and also on the possession of the Town's Common, and the ancient ceremony of the Riding of its Meiths and Marches. If these pages and illustrations help in any way to strengthen the ties which bind its many sons and daughters to the ancient Border town, the writers will have had sufficient recompense for their labour.

They are deeply indebted to the artists, Mr Tom Scott, A.R.S.A., Mr John Wallace, and Mr James P. Alison, who have aided so much, and so ably, in the production. Mr Alison has spared no trouble in the preparation of the Plan of the Common—the work involving several perambulations of the old boundary, and minute checking of old plans.

The writers have to thank the Town Council for permission to make use of the Burgh Records.

To the Marquis of Bute; Mr Bates of Langley Castle; Mr Gibson, Hexham; Mr James Oliver, Mayfield; and Mr Robert Purdom, Town Clerk, their best thanks and acknowledgments are due for valuable information and assistance.

The two views of the Common are from Mr James Barrie's "History of Hawick Golf Club," to whom the writers are indebted for kindly allowing same to be reproduced here.

The reproductions of Drumlanrig's Seal and the entries in the Town Books are made from photographs by Mr J. E. D. Murray.

The design on the cover is by Mr Alison; the shield being the arms of the Priory of Hexham, from a sculptured stone of the time of Prior Smithson, 1499-1524, which was formerly in the wall of the old White Horse Inn, Hexham, and now in the back wall of the building which stands on its site.

HAWICK,
10th February, 1898.

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GREY TRADITIONS GATHER ROUND
CHURCH AND TOWER AND TOWN ;
PASSIVE IN THE DRUID MOUND,
CENTURIES LOOK DOWN.
STILL THE HUM OF BUSY LIFE
RISES FROM HER STREETS,
STILL IN FOND, UNENDING STRIFE,
TEVIOT, SLITRIG MEETS.

R. S. C.

THE HAWICK TRADITION
OF 1514 :



THE
TOWN'S COMMON,
FLAG AND SEAL.



THE HAWICK TRADITION OF 1514: THE TOWN'S COMMON, FLAG, AND SEAL.

CHAPTER I.

FLODDEN—AND AFTER.

" Oh I hear the tread o' the fighting men,
I see the sun on splent and spear,
I mark the arrow outen the fern
That flies so low and sings so clear !

Advance my standards to that war,
And bid my good knights prick and ride ;
The gled shall watch as fierce a fight
As e'er was fought on the Border side."

RUDYARD KIPLING.

DOUBTLESS there are many parallels on the blood-stained page of history to the defeat of Flodden : but scarcely another battle that has left so deep a mark on the defeated people. Flodden witnessed the passing of Chivalry : the death of a Scottish King : and the utter prostration for a time

of the Scottish nation. The death roll on both sides was tremendous. In this fight alone there perished, we are told, a King, an Archbishop, four abbots, twelve earls, seventeen lords, four hundred knights, and seventeen thousand men. On Scotland, with its slender population of probably not more, all told, than three quarters of a million, the blow fell with disastrous consequences. Of the entire army that had assembled at the summons of James the Fourth, probably not less than one-fourth fell on the field. Scarcely a family in Scotland but lost a representative. In the words of an old English chronicle, "Thir is no grete man of Scotland returned home but the Chamberlain. It is thought that fewe of them be left on lyve." * The Chamberlain was the Earl of Home. It was a stubborn, well-contested fight. The Scots fought under heavy disadvantage from the presence of their King. Gallant as he was, the stake was too high. His death broke their ranks and victory became impossible. Even so, however, night fell on an undecided battle. Home, who brought what gleam of victory there was, stood all night with his Borderers on the field.† But the morrow revealed not only

* State Papers, Henry VIII., vol. iv. p. 2. † Lindsay of Pitcauttie.

the complete defeat of the Scottish forces but a carnage so dreadful that for many years henceforth Lowland Scotland lay almost at the mercy of England. Of the bravery of the Scots we have striking testimony from the victors themselves. In an old Black Letter book printed not long after the event it is stated that, "It is not to be doubted but the Scottes fought manly and were determined outhur to wynne ye Felde or to dye. They were also as well apoynted as was possyble at all poyntes with armoure and harneys so that fewe of them were slayne with arrowes: Howbeit the bylles dyd bete and hewe them downe woth some payne and daunger to Englyshemen. The said Scottes were so playnely determined to abide batayle and not to flee that they put from them theyr horses and also put of theyr botes and shoes and faught in the vampis of their hooses, every man for the moost part with a kene and shape spear of five yerdes long and a target afore hym. And when theyr speres fayled and were a' spent then they faught with grete and sharpe swerdes makyng lytell or no noys."* How effectively do these last words call up the silent scene of stubborn conflict!

* The Battle of Flodden Field. Reprinted, Newcastle, 1822.

To this fatal field of Flodden the town of Hawick, like other Border towns, had sent its quota of men. It was even then a large town according to the times, built on a beautiful site by the junction of the rivers Teviot and Slitrig—with its towers or bastel-houses, its ports and port walls, its grand old Church of St Mary (how beautiful, the carved old stones still testify), its baronial Tower and its thatched cottages. Most of the able-bodied men had gathered at the summons of their Over Lord, Sir William Douglas of Drumlanrig, Baron of the Barony of Hawick. Leader and men fell on the field. Tradition is not likely to err: and the mark of Flodden is on the town to this day. The thrill of anguish and of lamentation that ran through town and hamlet stricken with so terrible a blow is still felt in the legends, traditions, and song snatches of the people. Not only among the great where

“ Many a Scottish lady gay
Sate weeping in her bower,”

but in innumerable cottages throughout the length and breadth of the Scottish Borders there was desolation and despair. The memory of the fight continues vivid to our own day, gilding the harsh reality with the glow of poetry and pathos.

"I've heard them liltin' at the ewe-milkin',
Lassies a' liltin' before dawn o' day,
But now they are moanin' on ilka green loanin',
The flowers o' the forest are a' wede away."

The people would not believe that their King was slain though Lord Dacre found the body and it had been "brought to Berwick." They pictured him as a pilgrim to the Holy Land. And even his Queen who had married the Earl of Angus and later on obtained a divorce from him, pled as ground for it "that she was married to the said Erle, the late King of Scottes, her husbände, being alive, and that the same King was living three yeres after the feilde of Flodden or Brankeston."* Yet slain he was "a spear's length from the Earl of Surrey," and Thomas, Lord Dacre, with whom we in Hawick had once something noteworthy to do, said that the reason the Scots held him in such detestation was that he had found the body. "Albeit," he writes plaintively, "they love me worst of any Englishman living be reason that I fand the bodye of the King of Scots." More cogent reasons will, however, be found on these pages and elsewhere.

No other Scottish defeat had the magnitude of Flodden. Its name was written in fire on the Border-

* State Papers, iv. p. 385.

land of Scotland. The Borderers were brave men, accustomed to looking in the face death and the chances of battle. Fight and defeat were the ordinary hazards of their life. But Flodden cast a gloom that never lifted. The immediate result of the disaster was a harrying and laying waste of the Borders. The close of the year 1513, and the year 1514, witnessed a succession of most destructive raids on the part of the English directed against the valleys of Jed, Teviot, Liddel, and Annan. It is with one of these raids in particular—one conducted by Lord Dacre himself in 1514—that we in Hawick have most concern. But we shall not now discuss it. It falls more fitly into place when we come to deal with our old Hawick tradition which throws its light upon it.

The conduct of this enterprise against the Borderers fell in the first place upon Lord Darcy and Thomas, Lord Dacre, who, in 1512, had been created Warden of the Marches. At a later date the chief command was given to the Earl of Surrey, son of the famous old Earl who led the English at Flodden, and who (created Duke of Norfolk in honour of his victory) had died in 1514. All of them were tried soldiers. Dacre was perhaps the strongest Warden that the Marches of England ever knew to hold the turbulent Borderers in order. He

belonged to an illustrious Cumberland family and his chief seat was at Gilsland, but at this time, and for many years, he had as much or more concern with the neighbouring county of Northumberland. In particular his interest lay among the men of Norham and Hexham, &c.—“men of Tynedale and Redesdale”—men under the sway of the See of Durham and the Archbishop of York. In 1514, his brother, Sir Philip, was Captain of Norham Castle. And the Englishmen who took the greatest part in the raiding in the Hawick district were men drawn from the regions named. For the rest, and until we treat of these raids more fully, we may add that Lord Dacre was one of the fiercest as also one of the ablest of the English leaders and that his raids were conducted with a cruelty heretofore unknown in Border warfare. They were inflicted on a people already defenceless, whose strength had almost been exhausted in the one supreme effort of Flodden. Dacre carried fire and sword through this district: he reduced it to desolation and famine: he left it a wilderness. In the words of Thomas, Lord Dacre himself, in a letter to His Majesty's Council of the year 1514: “There was never so mekill myschefe, robbry, spoiling, and vengeance in Scotland than there is now, without

hope of remedye; which I pray our Lord Gode to continewe."

Even in such misery the raids were bravely met. The fierce Dacre war cry, "A Daker, a Daker, a read Bull, a read Bull," was answered often by slogans as fierce. At many points in their march the Englishmen encountered a stubborn resistance. In particular, as we shall learn later, this war cry met one slogan that in the event proved more than a match for it—as incentive to victory: and the shout of "Daker" has consequently never been heard in the streets of the old Burgh of Hawick.

In Scotland generally, events after Flodden resolved themselves into a struggle between the Queen (Margaret, sister of Henry VIII.), who was thought to represent the English interest, and the Duke of Albany who represented that of France. The struggle was complicated later by the alienation of the Queen from the Earl of Angus and by the advent of the young King himself into active politics. On the Borders they may not have liked the Queen, but they hated Albany. In 1524, the Queen wrote to her Royal brother of England: "Alsua I compleyne to ye Kingis grace my Bruder, of my Lord Dakyrse yat doyse and says to my hurt: for he sais to Scottis folk yat he

mervals that they will lat ony womane haf attoritie and speciale of me: quhilk words suld ever come of oders, no of Inglys menne."* If that was Dacre's way of speaking it was not half so blunt a way as the Borderers had. Albany came south with an army, and the Borderers, who had long thirsted for revenge and a good return blow against England, urged him to invade that country. But he declined and made haste north again. Whereupon the "gentilmen of the Merche and Tevidale" cried out, "By Godes blood we woll never serve you more, nor never woll wear your bagis (badges) again," and tore the badges off. "Wold to God," they said, "we were all sworne Englishe."†

It was wearing work dealing with the Borders. Even raids were difficult in these days, "there was noe horsemete" to be had. It is little wonder. As Lawson wrote to Cromwell in another instance, "The Scottes be so subtile, that often they shifte ther power and removes ther garrysons."‡ The Earl of Surrey felt it almost too much for him. In 1523, he wrote to Cardinal Wolsey, "as Sir Nicholas Carewe, Sir Fraunces Brian, and thoder gentilmen here can say,

* State Papers, vol. iv. p. 118.

† *Ibid.* p. 52.

‡ *Ibid.* p. 688.

the litle flesshe that I had is clene goon : and yet I am not sike, but in maner I ete very litle, and this 5 weekes day I never slepte one hole houre without wakinge, my myend is soe troubled for feare that any thinge should frame amys : which lak of slepe doth take awaye the stomake and for lak of sustynance the flesshe doth goo awaye. But I knowe myself too bee as a wasshing hors is that sone wool lose flesshe and soon recover it agayne : whiche I feare I shall never doo as long as I have this great chardge and contynuell business.* The same great "chardge" finished off Lord Dacre in 1525, and thereafter his son William reigned in his stead. After 1530—when the firm hand of Thomas, Lord Dacre, had gone—the Scots grew more active. They began to rally from the consequences of Flodden, and raids into England grew numerous. "The Lord Maxwell and the Laird of Buccleughe" were then the "chief manteinirs of all misguyded men on the Bordours of Scotlande," but there were others, and in particular "the men of Tividale," the men from "round Gedworth" (Jedburgh), and the Rule valley. In these raids the men of the Hawick district had their share, according to the predilections of

* State Papers, vol. iv. p. 55.

their overlords. Those favourable to the Earl of Angus, "men of south Teviotdail," were busy on several occasions. In 1532, Dacre wrote King Henry VIII., that James V. "came hunting the penult day of May into a waist ground called Crammell in Meggottes landes within 30 miles of the west Bordoures." "The common brute (report) and voice was to have made a roode upon the Debatable land and Liddisdaille men now being at the sheles frome their winter houses; upon the which brute the Parsonne of Awyke, one Pate Whitelowe,* two gentilmen of the Hebborns, being Kynnesmen unto th' Erle Bothwile came unto the castell of th' Armitage (Hermitage) in Liddisdaille to the keepers there, to holde the said castell to the behove of the said Eerl in salvegarde frome the said King in case He had common thidder."† From which we gather that the said "parson of Hawick" had his own views concerning James V., "King of Fife and the Lothians."

In general these raids or forays were not bloodthirsty expeditions and were distinguished from private feuds by their more genial and wholesome aspects. The Borderers (English and Scots) loved a fight and they

* Might not this be Pate Gladstains of Whitlaw?

† State Papers, vol. iv. p. 608.

loved plunder. They burned and harried: but they seldom slaughtered and almost never needlessly. There were savage incidents on both sides: murders of women and children: but they were so rare that they may now be forgotten. Other instances there were of kindness and of generosity. An English prison was not a grave: the doors often flew open. Carlisle walls could be scaled. The hanging tree no doubt was an institution, and had often a rich harvest; but the "notour thief," and not the honourable and occasional cattle lifter, was its principal victim. On the Warden fell the hardest task. The Earl of Angus and Lord Maxwell were Wardens for Scotland during this period. They had to curb the inveterate propensities of their countrymen: they were feared and often disliked on both sides of the Border. One of the best of the Buccleuchs has gone down honoured in Scottish history simply because he was a Scotsman first and a Warden afterwards. They had a thankless task—blamed and scolded by their Kings and looked on askance by their luckier neighbours who had a free hand. The Earl of Northumberland, writing to Henry VIII. in 1532,* gives a fine account of a foray. It was led

* State Papers, vol. iv. p. 613.

by "the Rotherfordes, Carrs, Davysons, Pryngelles, Halles, Trumbilles, Hunters, Robsons, Waughes, and Wais of Teviotdail, and of the forest of Gedworth, being 400 in numbre, as to say 300 tryed horsemen and a 100 fotemen." They came into England "at the close nyght" at "Belles in Tyndall" seizing all manner of goods as they rode. It was thereafter an "opyn day forrey" but ended disastrously for the invaders. Six score of them were wounded with spear and arrow; one was killed; and in the end a varied selection from the different families were captured and duly reserved to be hung "on Sunday, the 25th day of this instant month of August." They were not, however, hung on this occasion at least, for a deliverer came. No less a person than Lord Dacre himself—son of the grim Thomas—who gave orders to "let them escape"—to the great disgust of Northumberland. For, said Lord Dacre, if they "should be put to execution, then he should concur in deadly feid with Tyvidaill, seing they were of the principalles of said countrey." A more daring exploit followed, which led to Northumberland invading Scotland at His Majesty's "most drad commandment." This was an invasion in force. It had one feature that especially roused the ire of England. The standards were unfurled. This was the strongest

form of contempt the Borderers indulged in. There were about 3000 men, and the observers did not only perceive "two greate bushements made but alsoo did see openly 3 Standardes displayed, as to say, the Larde of Sesforthes, the Larde of Bucklewghes, and the Larde of Farnyhirstes." These had with them all the head men of Ettrick, with all Teviotdale on horseback or on foot, and men from the Merse, Jedforest, and Lauderdale. There was no stopping them, so "thei most contemptuosly had into Scoteland diverse prisoners with great numbre of horse, nolte, and sheipe."* This foray went in "by the edge of Cheviot." There were smaller raids on both sides in abundance, and the Wardens had their hands full. There was little peace till fully sixty years later.

These raids must be distinguished from the continual plunderings that were carried on by men more distinctively and in the language of the time alone accurately known as "thieves;" outrages committed on friend or foe indiscriminately by outlaws, desperadoes, "broken men." Of this class Liddesdale and the Debateable Land had abundance. Teviotdale itself had a bad name as a refuge for them, and Tynedale was

* State Papers, vol. iv. p. 626.

notorious. Their deeds were often dark deeds of black treachery. Heroes there were among them, honour, and a decided love of liberty. But such deeds as dishonourable outrage on the property of both sides at Flodden were unfortunately as characteristic of them as of the ruder Highlanders. All raiders were doubtless thieves in the language of the immediate victim; but to the raiders themselves the thief *par excellence* was the fellow-Scot, who relieved them of their hardly-acquired plunder on the way home. Liddesdale was a troublesome thorn to both countries. Its disposition was too variable to be tolerated. After the raid in 1532, that we have just noted, we find the Earl of Northumberland reckoning that the Jedforest and Teviotdale men must have entered by Tynedale, because had they gone into Liddesdale not one of them would ever have returned, "so trewe are they to Your Highnes." This was, however, after the murder of Johnnie Armstrong.

Forays against England were at all times lawful to fill the Exchequer. They were not only, at times, profitable, but they were the delight of existence. Under the necessary conditions of the case, quite recognised by all, they were conducted fairly and honourably. Cattle were the "current coin"—as they were in the dawn of history—and it was necessary that

they should be kept in circulation. The bloated English capitalist of the time was naturally the envy of his neighbours. But he held his wealth by the strong arm alone, and he was vulnerable. The man who hoarded wealth was a bad citizen; but the Border law made short work of him. Even the "thief" had his excuse.

The Borderers held a dangerous post, and a thankless one. Deprived themselves, by their very situation, of law and order in any peaceful sense, they were treated with scant ceremony by their more fortunate countrymen, who, not the less, relied on the strong Border arm for national defence. It is little wonder that in Border verse we find the most virile and the saddest poetry of our nation. If the Borderers achieved and retained independence, they at the same time sealed it in blood and tears. To many vices they added many virtues and a sterling honour. Nor must it be forgotten that, in later and more peaceful years, they attained first rank in literature, as they had already attained it in war. Three of the very greatest names in Scottish literary history—Hume, Scott, and Carlyle—are Border names, and the illustrious bearers of them were Borderers, sprung of purely Border stock. It is characteristic of their race that each of them was the leader of a revolt.

Such were the old days, when life was held cheap. We have glanced at them, because it is to this period of the first quarter of the sixteenth century that our town tradition belongs. It came to pass under these conditions. But, before we trace that tradition to establish it, we think it will conduce to clearness if we first discuss the Town Common and the old ceremony of the Riding of its Meiths and Marches that come into notice with the year 1537, leaving it to later chapters to discuss at length the tradition itself, and the town pennon that is linked to it and still exists—our sole clue to the truth concerning it.

CHAPTER II.

THE COMMON AND THE RIDING OF THE MARCHES.

" Show by what danger and difficle ways
Our ancestours at their utter mightis
Has brought this realm with honour to our days
Aye fightand for their liberties and rightis."

JOHN BELLENDEN (*beginning of 16th century*).

THE flag of the town of Hawick has been throughout all its existence, as known to us, associated with the riding of the Common, which takes place annually. It is necessary, therefore, to sketch briefly the place the tradition of 1514, which we are about to consider, occupies in regard to this ancient and very interesting ceremony. The Common-Riding existed long before 1514, but tradition leads us to the inference, that, in consideration of the great services rendered in that year by the youth of the town, a high and honourable place was accorded to them at the riding of the marches. Whether or not there was a flag in use before 1514 we do not know, but on the authority of

tradition we can say that shortly after that year, at all events, a flag was introduced into the ceremony, and adopted as a town flag, and that flag was a pennon captured at Hornshole. Tradition may be entirely wrong, but, as we do not wish to alter it nor to mix it up with conjectures of our own, we state the case as by tradition we learn it. That flag was allowed to be carried at the ceremony, and, as a mark of honour to the youth of the place, and to keep up remembrance for ever of their brave deed, the son of a burgess was chosen annually for the office of Standard Bearer or Cornet. As time went on, and particularly towards the end of last century, this (a matter at first collateral merely to an important and serious duty) became the most rousing and stimulating feature in the observance. The march of time destroyed the *necessity* for the riding of Commons. The ceremony became more and more but the shadow of itself—an old custom affectionately preserved from oblivion; but, in our case, this addition to it appealing, as it did always, to the young and the imaginative, flourished as vigorously as ever till it became, indeed, as it is to-day, the very heart and soul of the festival.

Hawick was a burgh before Drumlanrig's Charter re-erected it into a Burgh of Barony. The Charter

of 1537 (see "Annals" under date), which we have translated anew to ensure accuracy, puts this in very emphatic language. "Hawick stood," it says, "from of old created a free burgh in barony." As such it had its common—"le commoun hauch et commoun mure de Hawick"—and in the later pages we have gone at length into a discussion on the antiquity of it. We need not, therefore, enter into that here; neither is the argument one likely to interest the general reader. Suffice it to say, that we are of decided opinion that Drumlanrig did not grant the Burgh of Hawick its Common for the first time in 1537. We do not think it in the least likely that any thing but the most recent part of the town's story dates from the Charter, nor is the action of Drumlanrig, in those fierce old days, adequately explained by "generosity." The philanthropic bump of the mediæval knight was *not* largely developed. Common lands, very characteristic of the wonderful Saxon notions of government by the people that have led to such astonishing and splendid results in the world's history, date back from very old days. All village and other communities had their Common. And the religious and other observances, celebrated in connection with the marking and perambulating of their boundaries, were doubtless the first indi-

cations of what developed later—in the case of Hawick, into a feudal Common-Riding. The advent of feudalism introduced a strange and a foreign element, and an enemy to the common lands. The feudal baron was essentially grasping, greedy of land, and, though once established an undoubted protector, almost invariably demanded his payment for services rendered, in the shape of land. The old towns had to look keenly to their rights as against his, and often lost theirs in the endless disputes of the troubled period. In days of unenclosed lands, when the power of the barons was so great and their extraordinary capacities for oppression and aggrandisement could suffer so little check, the older Common lands disappeared, to be granted anew under new conditions. Power to keep, not scrip, was the test of property. Writing gave place to force, and writing itself was not available in proof of the town claims. Lands had been possessed immemorially—won by fight against other races in the dawn of history, and possessed ever since. Actual strength could alone secure them. The change, indeed, from traditional to written title in those days when kings gave huge grants of lands that never belonged to them, but were, and ever had been, the people's, was accompanied by the almost universal filching of land from its

ancient owners. It was all very well for King James IV. to restore to a Drumlanrig, Hawick and the lands about it. It was never his or his predecessors' either to give or restore. The conception of the king as over superior and ultimate proprietor of the land of the nation is a fiction of law introduced by the necessities of the feudal system.

The immediate result of feudalism to the country generally was a gain in two directions—concentration of military strength and resolute government. The Lord of the Barony was a protector of the town in his care against every one but himself: and the larger towns like Hawick could at a push give a fair account of themselves even against him. For the rest, he was leader in war, protector, governor, administrator, and judge in one. Commons remained or disappeared at his will and according to his strength to carry it into action. In fact, he was titular owner merely and Lord Superior: in law he was owner and Superior in one. But the law was brought into harmony with fact by his grant of the property right and his retention of the Superiority in the Common land of the town. The town armed with the grant took upon itself the protection of its property. Feudal law did not favour Commons. The great dignitaries turned an inquiring

and acquisitive eye upon them. The traders who held them were in poor esteem. The very fact that they were communities and not private individual owners imposed upon them a disadvantage. They were under two necessities, and to meet these the Common-Ridings, already, doubtless, existent in the form of religious and other perambulations, evolved into a more impressive ceremony. One necessity was that of impressing upon the memory of all the Burgesses a knowledge of the extent and of the boundaries of the burgh land. The other was the assertion and public vindication of their right and title to it. In the mediæval days of the ceremony, when the arm of the central government was yet weak, the annual perambulation and display of Burgess strength was probably accompanied by the attainment of redress *vi et armis* by strength of arm. There were courts; but possession was in this case all the ten points in the law, and the grievance already redressed was the best kind of grievance to bring under judicial notice. As the years passed the central executive power grew stronger and the maintenance of law and order passed more and more into its hands. The feuds and forays were sternly repressed and finally extinguished. The Borders were at last brought in reality, as they had always been nominally, under the

sway of the Scottish Government. Title to land and possession of it were respected in general. But even so the Commons found but scanty protection. They were owned, as in Hawick, or shared with outsiders, as in many villages, by individuals whose voice was silent within the Scots Parliament. The Commons were at the mercy of the landed proprietors about them, who, in many cases, by sheer force of continued and often, unfortunately, unchallenged encroachment, could most iniquitously establish a right of property over them. Why private land held in common should thus have been distinguished from private land held by a single individual it would pass the wit of man to discover. Apart from all questions of legal subtlety, who, in equity, could have any right or title to the Common of Hawick but the Burgh itself, direct and sole grantee under the Charter of 1537?*

In its later phase, then, the Common-Riding was directed principally to one end; to stop the effect of insidious encroachment and to interrupt the possession by others of any part of the Common. How vain it all was we shall learn later.

The change that led to the final partition or

* It may reasonably enough be held that the conveyance of the Common to the particate men constituted a latent trust in them for behoof of the entire burgh.

loss of the commons of the people was that to the enclosure of lands. This movement shows itself in more and more frequent regulation for the division of the commonities. Such a statute, for example, was that of the Scots Parliament, 1695, c. 38. Many statutes followed. The gainers were the large-landed proprietors. But it is not to be supposed that they in all cases forced this upon the people. In the case of Hawick itself, the townspeople were undoubtedly eager to enclose the Common, for they considered that the whole of the Common was theirs. And they were very poor, and they wanted to utilise their property to its utmost. Yet neither the towns themselves nor the landed families should ever have had power to divide, if only in the interest of the unborn generations. On this point we cannot do better, we think, than quote the following eloquent protest of J. S. Mill, speaking on another phase of this very question, and speaking, unfortunately, too late :—"Is the miserable compensation, and though miserable not always granted, of a small scrap of the land to each of the cottagers who had a goose on the Common any equivalent to the poor generally, to lovers of nature, or to future generations, for this legalised spoliation?"

The Common of Hawick, for the preservation of

which the inhabitants of the town have at all times shown so great tenacity and persistence, was, as re-granted by the Charter of 1537, an estate of some extent. The boundaries are now sadly shrunk; but, even as it is, the town may be considered to have got average satisfaction, compared with other towns, out of its reckoning with past history. There had, in all probability, been some shrinkage before 1767, the date at which we are now about to consider it. 1777 saw six-twentieths of it taken away. In the main, however, on to the year of division, 1777, the old Common stood as it had always been, with the old boundaries still effective. We know what the boundaries were in the year 1767, for the Duke of Buccleuch had already raised an action for division of the Common in the Court of Session, and in this year Commissioners were appointed to ascertain exactly what they were. Under the guidance of six of the inhabitants they proceeded round the entire Common, and they found the bounding line to run as it is described with great fulness in the paper now printed by us in the Appendix. From the West Port they went by the Common Loan to Burnford, one of the boundaries of the original Charter. This is very evidently at the foot of Haggisha' Brae, for there we are told "the Common opened," as it

THE BURNFORD:

Driving the Burgesses' Kye to the Common.

THE BORDO

DEPARTMENT OF THE ARMY



does now. From this point the town representatives and the Commissioners perambulated the marches as was done annually at the Common-Riding. It will be sufficient for our present purpose if we describe them in this place very briefly. The bounding line was one of great irregularity. It followed dykes, marches, ditches, burns, and so on wherever possible, and where no such abiding evidences were to be obtained it was indicated by the hillocks of turf—the gradual accumulation of many, many years of Common-Ridings. From Burnford, the line ran eastward to the river Slitrig, and across it to a “gravelly haugh” on the other side. It marched with Whitlaw, went to Meikle Whitlaw onstead, and near there crossed through the middle of the stance of a house. By the Hollow Burn, between Meikle and Little Whitlaw, it passed up Whitlaw or Flex Burn to the Flex marches; thence by Pilmuir Syke and Flex back burn to the march with Acreknowe, and thence by Winnington Rig march to Winnington Moss, another of the old Charter boundaries. By the upper part of the moss it reached Troutlawford, also one of the ancient boundaries, and there, we are told, the Common terminated in a narrow point. This Troutlawford, called Troutling-ford on the Ordnance Survey Map, lies at a point on the main road past the

Hero's Grave, about half-a-mile beyond it. A small burn crossing beneath the road is all that is left to indicate a ford. Thence the line led by the marches with Hawick Shiells and Nether Southfield, eastwards to Langflat, north to Whitchester Moss, and on by Seacroft, the Closses, &c., skirting near the present onstead of Whitchesters, and from thence to Westland Burn and Fenwick Loan. Thence it followed the march with Goldilands (the fourth of the old boundaries), the march with Crumhaugh, with West Mains, and so back to Burnford.

The reader will easily follow these boundaries on the map of the Common which we now print, and he will be able to realise the extent of the loss sustained by the town in the division of it. It was hard that the case should have been so; and bad legislation that sanctioned it. As it was, however, this action of the Duke, raised in terms of this Act, was allowed "to go to sleep," and the finale was reached under a private arrangement and arbitration—not in the Courts, whither it should, we think, have been sent. Yet the Act was behind it all. The town itself had become eager to reduce the Common to greater fertility and advantage. It was in great poverty. It had the utmost belief in the justice of its

claim, for the representatives of the original grantees under the Charter had agreed to act on the plain intention of the Charter, and to hand the Common over for the common good. The Duke seems to have claimed, as sole owner and also as contiguous proprietor, his title to a share in the property, in the latter case being fortified by alleged possession. The Decreet-Arbitral of Sir James Montgomery, Baron of Exchequer, to whom the case had been referred, was issued in 1777. Fourteen-twentieths of the Common remained with the town, the remainder going to the Duke and a few smaller claimants. In a sense, the Riding of the Common had proved a failure. It fell before the subtleties of the Law of Scotland.

Such was the old Common Muir of Hawick in the year 1777. Such was the extent of it as it had existed since the granting of the last Charter—that of 1537—a broad extent of hill and moorland, treeless and bare, but well watered and bountiful for the needs of the town's inhabitants. Thither went the sheep and kye and horses of the old Burgesses: and thither went the inhabitants themselves to cut turf for the riggings of their thatched houses: to cast peats for their domestic use. An estate of such extent, stretching outwards a long distance from the West Port of the town

occasioned no little anxiety in the earlier unsettled days and necessitated a constant watchfulness. There were thieves in plenty—English and Scots—and a burgher's kye were a fair mark for the reiver. Doubtless they were often "lifted" when their owners were napping. Perhaps that "honest man," John Deans of Hawick Mill, who was "slain in debait of his neighbours' gear" in 1546, was killed in some expedition, that started hot-footed on the trail of reivers who had "cleared" the Common. There is a tradition, we believe, that he was slain near Skelfhill. But, whether he was so slain or not, many a burgher lost life and limb in the old, wild days in defence of his kye. There was no peaceful town herd in those days to watch the grazing cattle; but watchmen to call armed men. Indeed, it was at a period very near our own day that the peaceful town herd supervened. Prior to the division of the Common the town functionary led an active life of feud with poaching farmers: and had to scatter their flocks from the Common by strength of arm. The name and prowess of one of them—Mungo Armstrong, chief of the craft—still linger in local history.

We have already indicated the reason for the old ceremony of the Common-Riding. We have shown

how necessary and important it was. One of the earliest entries in the Burgh Records, of date 1640, provides us with one of the Acts of the Bailies and Council passed to ensure the attendance of all Burgesses on the important day devoted to the ceremony:—

“Item, whatsomever person that beis not present yeirlie at the common ryding and setting the faires sal pay forty shillings *toties quoties* and wardit without license or ane lawful excuse.”

There were lawful excuses: for in 1644 one man pleads that he was at the Watch Knowe. The very name calls up a vision of the past. It might be thought that the need of the Watch Knowe had passed away before 1644: but the great Civil War was raging in England: Marston Moor was fought in this year: and the spirit of unrest and revolution was abroad. Men in general went armed; and the Common-Riding was conducted by an armed procession. Traces of this, indeed, were visible till the end of last century. Entries concerning the ceremony are fairly frequent in the Records, scanty as these are. They are all to the same effect, and show the solemnity of the occasion, the vigilance bestowed on the town lands, and the care taken to secure the transmission from bailie to bailie of a knowledge of the exact boundaries of them.

The ceremony of Riding the Burgh Common, as it was observed two hundred years ago, was conducted in the following fashion. The day set apart for it was very commonly fixed for the last Friday in May. On the day previous to it a proclamation or advertisement was read out at the Cross, which stood at the foot of Cross Wynd, and which has been long demolished. Such an advertisement will be found among the old documents we now print. It summoned the people, "in their best apparel," to attend the Bailies on the morrow at the Cross and at the Ca' Knowe, on foot or on horseback, under the penalty of ten pounds Scots. On the following day, accordingly, the people assembled at the Cross, where the procession was formed. The necessary officials were the Cornet, who carried the town pennon, the two bailies, the town clerk or notary, the town piper and drummers, and the four men who carried the spades. We find no direct mention made of the halberdiers, though the weapon itself is mentioned in the Records as being used for offensive and defensive purposes by an irate lady of the period, who made a subsequent appearance at the Bailies' Court. Of the townspeople the most prominent were the mounted standard bearers of the schools or guilds, which had been accorded the privilege

of being so represented, and the mass of the Burgesses. Considerable dispute and ill-feeling arose from time to time over the question of precedence. And the question was variously settled: sometimes by no colour being allowed to be carried save the town colour, and sometimes by an arrangement such as that of the year 1747, when the order was (1) the town flag, (2) the Grammar School, (3) the English School, with the "prentice" colour bringing up the rear. At the foot of Haggisha' Brae the actual riding of the marches began. Round all the boundary line already described, at points where no natural or artificial fixed landmark existed to form the line, there were little mounds, "hotts," or hillocks of old turf—the results of Common-Ridings stretching beyond the memory of any of the actors. Some of these can be seen at this day. The cavalcade halted at such places, and the men who carried the spades cut the sods and laid them on the accumulations of previous years. This was carried on throughout the entire route. It was a lengthy performance, and at a later time the actual work of making the marches was performed a day or two previous to the Common-Riding day proper. This was, however, a sign of degeneracy, and perhaps not often resorted to. At the house at Meikle Whitlaw, where the boundary line ran right

across the stance of the house, a quaint procedure was gone through. A sod was cut, and a man (probably the Cornet) ascended to the roof of the house and placed it on the "rigging." The town flag was then handed up to him, passed over the house, and was handed down on the other side. Assertion of ownership could go no further than this; and yet the land there has long passed from the guardianship of the Burgh of Hawick. It was the custom and the prerogative of the riders to chase off the Common all the horse, sheep, and cattle of the neighbouring tenants and proprietors that happened to be in sight. If any encroachment had been made at any point, witnesses noted the fact for the purpose of the notarial instrument that was drawn up later on. One such instrument we print in full on a later page. It relates to an encroachment by Sir Gilbert Elliot of Stobs, but we are, unfortunately, left in doubt as to what followed. In the case of another Gilbert Elliot, however, farmer of Nether Southfield, and one of the Duke's tenants, the bailies fined the offender, according to the evidence now published. Indeed, we learn that "he was told by Falnash that if he did not pay it the bailies would ruin him!" Smaller offenders were punished by fine or imprisonment, and in their case, at least, the sentence seems to have been carried out. One of the

THE AULD CA-KNOWE:

Calling the Burgess Roll.

EVOLVED AND CLIMATIC

IN THE



most important duties of the day centred at the Ca' Knowe. This was situated almost at the extreme limit of the Common, and is now better known as the Hero's Grave. It was a cairn of stones rudely piled together by an earlier race than our own to mark the last resting place of one of their chiefs, doubtless slain in some pre-historic battle on this spot. The cairn has long been removed, and the grave desecrated. But the spot is still enclosed. It was, and is, a site of peculiar grandeur. Here the Burgess Roll was called by the Town Clerk in terms of the old ordinance, in order to ascertain the absentees. These came up later before the bailies for fine or other sentence. The custom fell gradually into disuse, when the entire ceremony became a mimic one. Two proclamations were made. The first declared that if any encroachment was made on the properties contiguous to the Common by that day's riding, the proprietors, &c., might apply for redress to the magistrates within forty days. The second warned neighbouring tenants that they "must discharge their beasts" from Hawick Muir on that day, a fact already very well known, no doubt, to all of them. From the Ca' Knowe the procession resumed its march round the rest of the boundary. Thereafter, they rode the marches of the Common Haugh with the usual formalities, and

the annual duty so far as the Common was concerned was over. There were other ceremonies to be observed, and the festival presented other features, just as it does to-day, but with these we are not now concerned.

There can be no doubt entertained that the Common-Riding was regarded by the inhabitants of Hawick as an absolutely effective assertion of exclusive ownership in the Common. But from time to time the Bailies and Council would seem to have carried a little too far the virtue of good neighbourliness by granting privileges of peat and pasturage to the proprietors and tenants of lands adjoining the Common—probably Burgesses originally—without taking precaution against these concessions becoming, through long usage, the grounds for an assertion of prescriptive right. Equally troublesome to the town claim was the result of a vicious system under which the town herd was allowed to increase his very moderate wage by himself conceding the same privileges for small payments made to him by such as desired grazing on the town land. The town herds were not all Mungo Armstrongs: the consequence followed inevitably. And, in the last event of all, we find Sir James Montgomery, the Arbiter, treating even the Riding itself as though it had never been. He grants Hawick Common no distinction on account of it. He treats it exactly as

though it were a Common mutually shared by all the proprietors who could establish a servitude of pasturage and whose lands were contiguous to it: and this most emphatically it was *not*. It was in reality private land held in common by the Burgesses of Hawick *alone*. The quaint old ceremony had been carried through for centuries for the very purpose of rendering impossible such a consummation: Burgesses innumerable had been compelled to forsake business and pleasure to take part in it: sods had been cut and notarial instruments taken: all in vain. In the opinion of Sir James Montgomery, at all events, the custom of the Common-Riding was of no effect.

The year 1777 which saw the division of the Common saw likewise the passing of the Common-Riding as a solemn duty. The wonder is that it should have been continued at all after so heavy a blow to its prestige: but it survived as a mimic thing merely: held in high honour, indeed, but no longer under such weighty sanction. Perhaps it would have gone out of observance but for one old tradition—a tradition that concerned the flag. It is at this very time that the tradition of 1514 comes to the front. Till now it had been dwarfed by the cluster of memories and associations that had gathered round the Riding itself: but

the Riding had now fallen from its supreme position. In the discussion that often arose as to the continuance of the old custom, we believe that it was the tradition that concerned the flag that provided the convincing plea. It came back prominent as of old in the memories and affections of the people and saved the Common-Riding from extinction.

Certain customs observable still in the ceremonies incidental to the Common-Riding would seem to point to the earlier festival, originally that of an earlier people than ourselves. It may be so. The Hawick slogan, "Tairibus ye Tairiodin," gives us phonetically, if not orthographically, some old battle cry or chorus of a very dim and very distant past. It has retained sufficient fire and vitality to ensure its survival as vigorous to-day as when first some old bard of the misty past uttered it. We can guess at its meaning. Every native probably knows the meaning and feels it, but he certainly cannot give words to express it. Just as the commemoration of 1514 was fixed for the already existing festival of the Common-Riding (originally less festive than anxious and dangerous), so the feudal Common-Riding may have been fixed for a day or days devoted originally to far other uses. The ceremonies we now allude to are sufficiently striking. One is the procession

HAWICK MOAT:

Sunrise.

THOMAS A. SMITH

1870-1900



at sunrise to the Moat, another is the wearing of oak leaves. The first owes, most probably, its origin to sun worship, but it may be due to quite other causes unknown. The oak leaf may symbolise part of the same ancient ceremony. It could be due to the Restoration of Charles II., though that is not at all likely, and it might be quite accidental. Whatever the meaning of these things was it is now lost. Neither Cornet, nor lads, nor anyone else can tell why these things are done. But they can tell, and do tell that they have always been done. Such observances as the "boon fyr" or Beltane fires, celebrated and kept up well into the eighteenth century, show old religions and paganism not yet extinct among us, and a countless number of superstitions prove the same fact to-day. The Common-Riding day is a shifting day, but very commonly was celebrated in May—a month seemingly of great importance in old and forgotten rituals. It is not modern ingenuity, but very old belief that asserts the connection of our June festival with remote times and early peoples. But the vista thereby opened up is, nevertheless, one more proper to the poet than to the historian.

CHAPTER III.

THE FLAG.

“Redeem my pennon—charge again !
Cry ‘Marmion to the rescue’—Vain !
Last of my race, on battle-plain,
That shout shall ne’er be heard again.
Yet my last thought is England’s—fly,
To Dacre bear my signet ring,
Tell him his squadrons up to bring.”

SCOTT.

THERE has been in the past no little confusion created by writers on the subject being, unfortunately, imperfectly acquainted with the actual character of the Common-Riding Flag. There is an unaccountable haziness as to the design and colours of the flag. It may be doubted whether an earlier examination of the older flags has ever been seriously made. We have examined as many flags as we have knowledge of, both in the possession of the Town Council and in that of the Archæological Society, and, with no desire to start theories, but a very earnest desire to get at the truth, we publish illustrations of these,

in colour, drawn from the flags themselves. The original sketches, which show the colours with greater truth and exactitude, will be available to any interested. The traditional view that the flag is the copy of a captured flag has been steadily kept in mind. And our enquiry tends to show that the traditional explanation of the flag is most probably correct. We think we can establish the following facts, and will proceed to discuss them more fully:—

1. The Hawick Flag should be a pennon.
2. The oldest known specimen is the so-called "Union" Flag of date 1707, which still exists in the museum. It is a pennon.
3. The 1707 Flag is a copy of a still more ancient pennon.
4. The old colours have since 1832, or some date nearer our own day, undergone a change—for the worse.
5. The design of the flag has undergone no change, save that incidental to the change from a pennon shape to a square flag.
6. The device is not that of the Flag of Scotland, "azure with saltire argent." Nor would the pennon of 1514 have in any way resembled it.

For convenience of reference, and in discussion, we shall number all the flags we have illustrated in the following order, which is chronological :—

1. The so-called "Union" Flag of date 1707.

The name is an entire misnomer.

2. The Grammar School Flag bearing date 1744.
3. A Common-Riding Flag of date unknown
(probably of the end of last century).
4. Flag carried by the Westla' lads during a
dispute in 1809.
5. Common-Riding Flag, 1832.
6. Do. do. 1865.
7. Do. do. present day.

(See colour sketches opposite.)

No. 4 is a protesting flag of some kind, interesting no doubt, but of no use to us in this enquiry, and we refer no further to it. All these flags (except No. 4) are alike in design. But No. 1, the oldest, is distinctly a pennon, and an examination of the older Common-Riding Flags, Nos. 3 and 5, shows these to be considerably *longer* flags than the present-day one. The course of evolution, if we may use a phrase much in people's mouths, has been steadily and exclusively from the pennon shape to the square shape. The reason is very obvious. Flag No. 1, a light flag, must have been an



1



2



3



4

HAWICK
COMMON-RIDING FLAGS.

THE
NATION



5



6



7

easy prey for the wind. It, and Nos. 3 and 5, torn and frayed by the wind, have been through that agency reduced much to the present-day shape. The tendency of the flags to be thus docked having been observed, they were gradually reduced to what is seen in the latest examples. A glance at the flags in the illustrations shows this quite clearly.

We had always considered that (the 1514 story being assumed to be true) the captured flag must have been a pennon. We know, and shall discuss the matter fully presently, that this 1707 Common-Riding Flag (to give it its true name), which has been miscalled the Union Flag, was made to replace an older flag too "torn and useless" to be carried longer. This was a "pencil" or small pennon, and is so termed in the Council Records. This older pennon may, or may not have been, the captured pennon itself. We have now (1707) reached a period distant one hundred and ninety-three years only from 1514. But more possibly it was merely a copy, though doubtless at that time the original was in existence. Now the design of the flag—the device on it—has undergone no radical change in the one hundred and ninety years that have elapsed since 1707, and it may be conjectured that the 1707 pennon gives a fairly accurate idea of the 1514 trophy; that, in fact,

from it the trophy, as it must have been, may easily be sketched out.

Chambers' Encyclopædia (1865) gives the following description of a pennon, which shows clearly that, even as it stands to-day, the Common-Riding Flag is a pennon (docked for the convenience of the carrier):—

“Pennon, a small, pointed, or swallow-tailed flag, carried by the mediæval knight on his lance, bearing his personal device or badge, and sometimes richly fringed with gold. The device was so placed as to appear in its proper position when the weapon was laid for the charge.”

The Hawick pennon answers this description, and differs from what may be called the “infantry” flag; and the figures 1514, though placed on the pennon at a comparatively modern date unknown, were placed in accordance with this idea and in accordance with the older shape of the flag (now changed), and can only be read properly when the flag-staff is held like a lance in charge.

Bearing in mind the fact, that when the trophy became too torn and tattered for further use, any proper copy of it in the true sense, including crest, motto, &c., of its first carrier and the rich blazonment (if it ever possessed these), would be beyond the taste and purse of the period, it may be argued that the more simple

device would be adhered to, and thus a rough idea be formed of what the original was like. Most probably, however, the saltire alone was the device on the trophy of 1514. Be that as it may, we think we have proved our first point: the Hawick Common-Riding Flag should be a pennon.

The 1707 Flag has been, both by Mr Wilson, Town Clerk, and by Mr Norman Kennedy, called the "Union" Flag. The latter gentleman, in a paper read before the Archæological Society in 1866, amplifies this further, and adds: "Made in commemoration of the Union between Scotland and England." It is not, however, likely that Borderers would think it necessary or even tolerable to commemorate any such event as the Union, which by the great mass of the people of Scotland was considered a treacherous surrender, a betrayal, and a national disgrace. It may have suited high dignitaries, who were not beyond suspicion of being well paid for it, to simulate joy over that event, but it did not suit the common people, who got no bribe, and could not summon up any joy at the prospect of being swallowed up, as they thought, in a partnership in which England held so overwhelming a position. Not till long after 1707—not till almost three-quarters of a century later—was Scotland charmed out of her sullen mood to see

with unjaundiced eye the blessings she derived from the compact. We believe that a Union Flag, far from being adopted by Hawick in 1707, would have been torn to rags and burned in the streets. Had the flag been a Union Flag it would have borne the Union symbol—the Union Jack—formed by the union of the St. George's Cross and the St. Andrew's Cross. It does not bear this device. It is simply the Common-Riding Flag (the design of which we shall discuss in a little) in the shape of a pennon. That design has been called that of the Flag of Scotland. It is not, but, if it were, it is upon the "Union" Flag also. And the so-called "Union" Flag cannot, at one and the same time, represent the Union Jack and the St. Andrew's Cross *simpliciter*. This little discrepancy has escaped the notice of our antiquaries.

The 1707 Flag has nothing to do with the Union. It bears the date 1707 because that date is the date in which it was ordered to be made by the Town Council. This was evidently the custom; and the modern practice of putting the fixed and permanent date 1514, instead of the various dates peculiar to the flags which bore them, was adopted later, most probably after the partition of the Common in 1777 had lessened the importance of

the Common-Riding *per se*.* The date 1514 is no part of the device of the flag, and never was. It was not on the trophy: it was not needed on the copy while still the trophy was preserved, but as the years went on it was considered advisable, and in fact was so, to give it a permanent place, the better to certify the fact that the flag was a copy of that of 1514. It is merely an expedient to fix a fact on the memory. The flag bears upon its face, in addition to the figures 1707, the letters "H.C." which alone, we think, dispose of the Union theory. They evidently mean "Hawick Common" or "Hawick Colour," and more probably the latter, the word "colour" being used for the flag in the Burgh Records. We do not know how they could be read on the "Union" hypothesis. They agree, however, with the traditional view, and with the view that this is a flag peculiar to Hawick, and they do *not* agree with the view that it is the Flag of Scotland.† But through the good fortune of the purchase of this very

* This does not agree with Mr David Watson's theory that the date was added after the 1514 episode to the already existent town flag.

† These letters on the old flag of 1707 have, it is more than probable, some connection with the old jingling rhyme—

" T for Teri, O for Odin,
H for Hawick, and C for Common."

flag of 1707 having been recorded in the Council Records we can go much further. We know practically all about this flag, and we know that it took the place of an older one, of which it was a copy, as flags peculiar to any one place or occurrence always are. From the Council Records we extract the following, which are the more interesting in view of the fact that this old flag is actually before us, and rests in the Hawick Museum :—

“1707, May 9. The said day the Bailies and Council did unanimously agree that a new colour, standard, or pencil should be bought and be in readiness at the next ensuing Common-Riding : in respect that the old one was altogether torn and useless, and to that effect to uplift and take of the readiest burgh money.

“May 30. The said day Robert Roucastil and Robert Brown, the two present Bailies, with the Town Council, did ride the meiths and marches of the Common, and George Deans, merchant, was the first that carried the new pencil, standard, or colour, which, being bought by Bailie Martine at Edinburgh, cost (the money being paid out of the burgh money by Bailie Roucastil) the price after-mentioned, viz. :—

“ <i>Imprimis</i> for 3 ells of silk at 44/- per ell,	£8	12	0
Item for 8 ells of ribbon at 3/- per ell, ...	1	4	0
Item for other 2 ells of ribbon at 5/ per ell,	0	10	0
Item for 6 drope of silke,	0	12	0
Item for making of it,	1	16	0

Scots, £10 14 0”

We do not know what the “6 drope” were. Were they the hanks of silk thread for the sewing, or were they for the fringes? The Scotch ell was 37·2 inches

Council from H. 20th 30 day of May 1707

The day Robert Rowlandt Robert Rowlandt the two present Bayliffs with the
 Council did upon the last the 20th of May 1707 and being some time before the
 that the night varied the new powder stand on a table, which being brought by Bayliff
 at Donnington road the paper of powder and the money paid out of the
 being money by Bayliff Rowlandt as the paper of powder and the money

Impressed for three sets of Ribbon all for the same
 shilling per set extends to 06 - 12 - 00
 It: for eight sets of Ribbon all for the same shilling per set 04 - 00
 It: for other two sets of Ribbon at 10 shilling per set 20 - 00
 It: for six dozen of Ribbon 00 - 12 - 00
 It: for making of it 01 - 16 - 00
 Summed 10 - 04 - 00

FACSIMILE OF ENTRY IN COUNCIL RECORDS (see preceding page).

is thus easy to make a sketch of what the trophy (if trophy it be) was like, and this we have taken the liberty of getting done as a title page. The artist has drawn it as a swallow-tailed pennon, that being much the commoner, and there need be little doubt the true form. The circumstance that the flag was a pennon would necessarily give the flag a somewhat different appearance to what it has to-day, but the design is the same, and agrees closely with that of 1707.

Lastly, as to the device itself. Mr David Watson, in a very interesting paper read before the Archæological Society so far back as 1867, throws doubt upon the story of the trophy. He says "the only device upon the flag is the peculiarly Scottish emblem of the St. Andrew's Cross;" *ergo*, it cannot be an English flag. This is a fair example of the common fallacy of *petitio principii*, or begging of the question. Of course, *if* the emblem or device were "peculiarly Scottish" his conclusion is difficult to evade. But that is precisely the point at issue. Mr Watson calls the device "The St. Andrew's Cross." This is misleading to the general reader. Under the name of saltire, the St. Andrew's Cross does not seem so peculiarly Scottish. We get rid of an association of ideas not always correct. It is

a saltire, and a glance at Debrett will show Mr Watson that this same saltire, or St. Andrew's Cross, appears on the coats of arms of many old English families.* As a white cross it became, as we know, the emblem on one of the flags of Scotland, but the saltire itself was *never* exclusively the property of Scotland. The St. Andrew's Cross of Scotland was white—a broad white cross, and the flag on which it was placed was blue. "Azure with saltire argent," is the description in heraldic language. This Hawick Flag is seen thus in *no* example. It bears no resemblance whatever to the Flag of Scotland, and yet the latest assertion is that our town flag is the Flag of

* The following old *English* families, and peerages (temporal and spiritual), have the saltire or St. Andrew's Cross on their armorial bearings (Debrett's Peerage):—

The Marquis of Abergavenny (Nevill). Creation 1392.

The Marquis of Ailesbury.

The Lord Bishop of Bath and Wells.

Baron de Ros (Fitzgerald de Ros). Creation 1264.

Marquis of Lansdowne (Fitzmaurice). Creation 1181.

Baroness Despencer (Boscawen). Creation 1264.

The Lord Bishop of Rochester.

Baron Gerard (Lancashire). 1611.

Baron Windsor (Windsor Clive). 1529.

The old Abbey of St. Albans (azure with saltire *or*) may also be mentioned.

Our critics have forgotten the most important element—colour.

Scotland. So little, indeed, is even the white saltire a Scottish device that on a red ground (*gules*) it appears as the device of the Nevilles, an old Northumberland family with very close connections with Hexham, and who fought at Flodden. Nor is it to be supposed for a moment that the makers of our 1707 flag considered it the Flag of Scotland. Surely they knew the colours of the Flag of Scotland, and surely they would scarcely fix the letters H.C. upon *that*. When Bailie Martine went to Edinburgh to get his flag he would have had no need to buy materials to make it with had he wanted the Scottish flag. And the assertion of a peculiar proprietorship in the flag, made in the letters "H.C." sewn upon its folds, would have been inappropriate and absurd. Mrs Oliver, who follows Mr Watson, describes the town flag as "a blue square with a St. Andrew's Cross." This is inaccurate and insufficient. It should be a pennon—blue, with a saltire yellow or gold, crossed by a bar yellow or gold, running the whole length of the pennon. And such a saltire could have been carried by an English knight on his pennon, which Mr Watson is inclined to doubt. If this be not a copy of a flag captured at Hornshole, it is not for the reasons hitherto put forward, and certainly not for the reason that it is

one of the flags of Scotland. We have traced it back, as it is, with device unchanged, for a hundred and ninety years; and it has been shown that the flag carried so far back as 1707 is a copy of one older still. The cross bar, which is faithfully copied on all the flags, was probably not part of the device; but, as probably, it was on the original flag, the reason of which we shall consider presently. We may conclude our discussion by a quotation from Mrs Oliver,* which shows how hard the argument is pressed against the tradition :—

“This (the Scottish flag) hypothesis is further borne out by the fact that the flag has not been preserved, *which it assuredly would had it been a trophy.*”

This is a *non sequitur*. For it does not follow that because a trophy has not been preserved, a flag of the present day is unlikely to be a copy of it. Tradition says it was preserved for over two centuries.† All trophies must perish sometime.

It will be seen that the Grammar School Flag, with date 1744, bears upon it the very same device as the Town Flag. This is as we should expect it to be, and

* “Upper Teviotdale,” &c. (Hawick, 1887), p. 100.

† It is just possible, too, that the trophy adorned the old Church of St. Mary, and vanished, like the church itself, in the sweep of the Reformation.

the fact weighs very heavily against the hypothesis that the Town Flag is simply the Flag of Scotland. How does the cross bar come about? And why has it been so faithfully placed on all the flags of the town? The Grammar School Flag, also, is quite evidently meant to represent a pennon, and itself probably was one. Had the Flag of Scotland been intended, this flag and the town one also would almost certainly have been small square flags—azure with saltire argent, and no cross bar. We should naturally expect the School to adhere to the local flag, and we see that they have done so. Among the young, the tradition would hold fullest force and sway. The date 1744 on their flag shows, doubtless, like that on our earliest existent Common-Riding Flag (1707), the date of its manufacture, and proves that up to this time at least 1514 had not been adopted as the permanent date for all Common-Riding flags. The Grammar School Flag was a copy of the Common-Riding Flag which was naturally the glory of all the town boys. It bears the letters “H.S.” to show that it is the School Flag, and it seems to have been coloured gold to distinguish it from the town one. We presume “H.S.” should be read “Hawick School.”

It is noteworthy that the device of the older Hawick flags, in point of colour, is heraldically true. The old

rule in this matter prescribed that there should not be a colour on a colour, or a metal on a metal. Gold and silver were the two metals. Gold on azure is thus correct, but red (the modern colour) or *gules*, as it is heraldically, on azure is false.

The cross bar that we have so often alluded to was doubtless put upon the original pennon to strengthen it. It has thus, faithfully copied as it has been, become in a sense a true part of the device on the Town Flag of to-day. The Marquis of Bute, to whose suggestions we are so considerably indebted, and who is more amply referred to in the following chapter, wrote us as follows :—

“ Your argument would certainly seem to prove that this pennon is not the Flag of Scotland. The device you describe” (the saltire *plus* the cross bar as essential to the device) “ would be almost impossible to describe heraldically, and I remark that Parker, in his glossary *sub voce* ‘Pennon,’ says : ‘Pennons are not to be charged with arms, but only with crests, heraldic and ornamental devices, and mottoes.’ None of the English coats you name have the colours mentioned by you, namely, gold upon blue, though the See of Bath and Wells comes near it. . . . I think that the additional band running down the middle of the flag may have been—like the lines of lace upon church vestments—to cover a seam, and in a war flag it would have been useful to protect the flag against rending, while the fact that the St. Andrew’s Cross would be regarded on the pennon as the badge rather than the arms of the Priory” (Hexham Priory—this is followed up later) “ would cause the use of this extra band to be regarded as indifferent.” In a subsequent letter he added :—“The standard figured in Parker’s glossary of heraldic terms has a line down the middle, indicating a seam, and, although

in this instance there are two colours, I presume that they would all have been made of two breadths of silk, and therefore had a seam. According to him the guidon was two-thirds of the standard, the pennon one-half the guidon, and the pensil a small pennon."

We may, therefore, sum up anew the results of our discussion on the Hawick Common-Riding Flag in the following manner:—

1. The flag is not the Flag of Scotland.
2. It is a copy of a pennon or pensil azure with saltire *or*.
3. This latter result gives the clue to be followed.

Who bore this pennon azure with saltire *or*? We have now sufficient basis on which to work for the establishment of our case for the tradition.

CHAPTER IV.

THE TRADITION.

“ For auld stories that men reads
Represents to them the deeds
Of stalwart men that lived ere
Right as they then in presence were,
And certes they should well have prize
That in their time were wight and wise
And led their life in great travail
And oft in hard stour of battail
Wan richt great price of chivalry
And voided were of cowardy.”

BARBOUR's *Bruce* (14th century).

IT would seem to be the bounden duty of writers of local history to deprecate and depreciate local traditions. We are unwilling, and perhaps unable, to trace the causes of this: but we may guess that one very plausible explanation is, that the writers evidently consider scepticism to be the most effective manner of illustrating that critical spirit, which according to modern ideas is the spirit *par excellence* of the historian. It is in general, also, easier to cast doubt

upon a tradition than to maintain it; it attracts greater attention to do so, and there is no doubt that even to the public themselves it is somehow more interesting and entertaining. And yet the story of tradition—the belief of generations, even of centuries—is something so venerable, carrying with it so great a weight of authority, that the mere guess-work, conjecture, and uncritical commentary of the historian, unless fortified by facts and circumstances almost unassailable, is by comparison a thing of little account. Somehow tradition gives us, if not the bald truth, at least the essential truth of history as no critical historical work can ever give. Each particular ballad of the Scottish Borderland could, though we do not think it likely, be proved false as a literary transcript of the actual occurrence of which it gives the story, and the fact remain that the ballads, as a whole, give us not only the truest account of old Border life, but that life itself, almost, from the dead.

The Hawick tradition of 1514 has fared badly at the hands of local writers. In essentials, indeed, the various and mutually destructive accounts of the old story agree; but there has been added to the very small allowance of fact that the centuries have left to us, so great a wealth of ridiculous detail, that the tradition itself has been looked at askance as though

it were artfully designed by the deep and subtle inhabitants of Hawick to minister to their own glory ! How absurd is all this we hope to prove ! Yet the blame for it lies, not on those sister burghs whose genial scepticism is a looked for and admirable accompaniment to the Hawick processional triumphs, but on our own indefatigable songsters and literary "restorers" who have favoured us with the details of the fight by Hornshole, that envious Time has withdrawn from us, and to such critics as have proved to their own satisfaction that the captured pennon is a picturesque fabrication that crumbles before the keen light of historical research. We have already seen, however, that, like the hypothetical train of George Stephenson that encountered the cow, the old pennon has encountered the criticism, and the result has been, "so much the worse for the"—criticism. We shall now strip the old tradition of the incredible and unfounded amplifications that have been affixed to it ; and observe the change. The essential truth of the story of 1514 is imbedded in the following words, which convey the only form of the tradition worthy of notice :—

The great defeat of Flodden in 1513 had brought about in the Hawick district the almost entire wiping out of the men-at-arms. In Hawick few men were left to defend the town. It was at the mercy of the English who, in the year of Flodden and in the subsequent year,

over-ran the country pillaging and killing. One such party did in 1514 approach the town of Hawick and threaten it. In default of their elders, mostly slain at Flodden with Drumlanrig, the local leader, the young men of the town rose to the occasion. They went out as far as Hornshole, some two miles farther down the river, encountered the enemy there, routed them and took from them the flag they carried. This flag, or at least a copy of it, has been carried annually at the ceremony of the Riding of the Common ever since.

The tradition, in this form, was well known to the inhabitants of Hawick at the end of last century. We find various written and printed allusions to it at the beginning of this, and a more elaborate and incredible account of it some twenty years later. There cannot be any doubt that it is a very old tradition concerning some exploit by the youth of Hawick in the year 1514. Most evidently a great deed had been achieved by them at a time when their elders thought the wiser policy was to show no fight, but to stand inactive within the town gates. The achievement received its due acknowledgment, and brought to the youth of the town the privilege in all time coming of carrying a copy of their trophy at the Riding of the Common. It can be to no other than this tradition that the Town Records point, when they state, as they do state on the 1st of June, 1706, that in that year the "young unmarried men of the town" acted in hostile fashion, "contrary to all ancient custom and practice of the said

town for many generations and hundredths of years past." The tradition, therefore, as a tradition is perfectly well established as very old, and we may infer, with the greatest likelihood of truth, that it does go back unbroken to the incident itself.

Nor does history fail to support it and to lend its colour to the story. As we have seen in Chapter I., Thomas, Lord Dacre, raided the Hawick district in this very year 1514, and to these raids of 1513 and 1514 we shall now direct greater attention. In lack of any direct written evidence for the incident itself we shall accumulate the many probabilities. There are letters or dispatches of Lord Dacre which throw a side-light full of suggestion on the matter. These dispatches are of great interest and call up as contemporary evidence alone can, a whole picture of desolation and misery throughout the Border country. If we would realise the awful nature of the defeat at Flodden, the helplessness of the Borderers and the gloom that settled over the entire district after that fatal fight of September, 1513, the gloom into which the ray of light cast by so bright an episode as that achieved by the youth of Hawick came as a glimpse of unspeakable relief and hopefulness to the town's people, we cannot do better than read the letters of Lord Dacre describing his

campaign. They are the brief curt letters of a soldier, but there is surely no one who cannot read between the lines the details he never wrote. We take the liberty here of paraphrasing them.

In October, 1513, just after Flodden, we find Lord Dacre writing, that he was ready to make raids according to order, "when moon* and weather permit;" and, the same month, he writes to the Bishop of Durham, that he shall not fail speedily to make a great raid into Teviotdale, according to the Bishop's wish. From the same letter, he appears already to have been busy in the district. I have, he says, caused four raids to be made in Teviotdale: one to Howpasley Tower, which I burned, and took away twenty-eight score sheep and other gear; another to Caerlanrig; and a great raid, by men of "Tynedale and Redesdale," to the Castle of Ancrum, the town of which was burned, taking nine prisoners, and goods and cattle; another to Annandale, which was laid waste; and, over and above that, "Tevidale shal be kept waking whils I deal with them myself." In November, he tells King Henry VIII. that he and his brothers Philip and Christopher had

* So much of the raiding being done by night, the time of full moon was generally selected.

made a raid in force into Scotland with several thousand men, mostly cavalry. This expedition divided, as was customary, the better to distress the country; his brother Philip, with three hundred men, burned and destroyed Rewcastle, and sacked the place and district. Sir Roger Fenwick, with three hundred men, burned, destroyed, and sacked Lanton, near Jedburgh. He (Lord Dacre) had gone to Dunion, and had been "right sore" pursued at Bowset in Rule Water. This was by the Sheriff of Teviotdale (Douglas) and others who arrived on the scene with about twelve hundred men. There were three standards among them. The English had a hard time of it there and a stubborn fight. The laird of Wauchope was hurt by an arrow, and his horse slain. "Diverse Scotsmen were hurt there," and "diverse" Englishmen, we may add, though he does not mention them. Liddesdale was laid waste. They burned the town of Dykeraw with a tower in the same, and laid corn and straw to the door, and burned it roof and floor, "*and so smoked them out.*" This last is a very grim touch. They then razed Southdean and Lustruther, destroyed the grain, and took prisoners and plunder. But the Scots gathered as the warnings blazed out, and the Earl of Home, the Chamberlain, came to the rescue with

two thousand men carrying four standards. The English raiders now effected a union among their divisions and appear to have been some three or four thousand strong. The Scots forced them to retreat, but could not recover the booty. And so the English rode homewards as fast as "nowt, sheep, and swine" could be driven. The total plunder, Dacre reckoned, was not great, for the "country was warned of our coming, *and the beacons burned from midnight forward.*" What a picture of the old days is here !

In May, 1514, we find Lord Dacre a little nearer ourselves. Once more the account is one of the burning of towers, towns, and houses in the West and Middle Marches. Liddel Water ; Caerlanrig and its neighbourhood ; Ewse Water ; the head of Teviot Water, from Branxholme to Ewse ; Borthwick Water, from Borthwick mouth to Craik Cross ; Ale Water, from Ashkirk to Ale Moor Tower ; all of these, Dacre writes, are "laid waste now, and no corn is sown upon any of these lands" (a grim look-out for the inhabitants), and all this, he adds, with the pride of an artist, is over and above the great raid of last November, that he had already written of.

He makes no mention of Hawick, which he did not attack. The reason of this, satisfactory enough to him

then, we cannot now gather. But he was very close to it, within one or two miles indeed, and devastated all the land round it. The town, he possibly thought, could defend itself; but it is evident that it had no power to lend help outside. Some six months only had elapsed since Flodden. There can be no doubt that the near presence of Lord Dacre would alarm the Burgesses, and as little doubt that it would rouse the younger and bolder element in the town to answer in some way so defiant a challenge. It was seldom that English soldiers, unless in great strength, penetrated so far as Hawick; and that Dacre could now do so with such a force as he had at his command, proves clearly the defenceless condition of the inhabitants. There were heavy and anxious hearts in the old Burgh of Hawick as this able soldier moved round the north side of the town. The beacons were blazing everywhere. From Borthwick mouth, two miles from the town, to Ashkirk on the further side, six miles off, his progress was anxiously watched. Is it much of a stretch even for prosaic imaginations to consider the likelihood of just such an event as the incident of 1514?

Is it not extremely probable that some considerable body of his horsemen (if not Lord Dacre himself), reconnoitring round the town, should have been set

upon and defeated by the little strength the town had been able to muster? We know that raiding expeditions divided into sections the better to traverse the district. And we know that from the vicinity of Ashkirk, the direct and quickest route to Northumberland lay in the line of somewhere near Hornshole, across Rule Water and Carter Fell, to the Border march. There are very many probabilities that make for the truth of the tradition, and anyone may figure them for himself: but we do not think there are any facts that establish improbability, and there is none that renders it impossible.

It would probably never have occurred, even to local critics, to have doubted the story had they not chosen to draw upon their imaginations for the details. The little party that started from Hawick was *not* a rabble. They were most probably not all of them on foot. Why should they have been? If people will have details it would be better to provide them more adequate to the occasion, and with nearer approach to historical likelihood. There were bowmen on foot, and horsemen besides in these days. Most expeditions had both. And the town of Hawick, even in the bitter days that followed Flodden, was perfectly able to furnish and equip a thoroughly competent, though

small force, to harass the enemy. The townspeople had not all been "slain at Flodden," but only the pick and the flower of their manhood. This ought to have been obvious enough.

That Dacre makes no mention of the incident is not surprising. No one can read the English State Papers without rubbing his eyes occasionally to discover what deed of prowess the Scots ever did achieve in the raids. We require a Scottish account to strike the mean. We learn from English accounts that the English slain at Flodden numbered 400! Another condescends to 1500! Lord Dacre wrote to a choleric and hasty King, who had a very quick way of dealing with such matters. Henry VIII. was not the monarch to whom an anxious Warden of the Marches could confide chance disasters to expeditions which had been in their main object so entirely successful. The principal fact for us to note is, that whereas the tradition went from father to son in Hawick, and no one knew anything of this letter of Lord Dacre, the fulness of time brought the publication of the letter, and the letter supported the tradition.

But the flag, too, can tell its story. And the story is in striking corroboration of the traditional version of the fight. Our discussion in the previous chapter has already established the true colours of the Hawick Flag.

The trophy of Hornshole was a pennon on a field azure a saltire *or*. Who carried it?

In our first chapter we have already stated, and laid stress on the fact, that the Dacre interest at this period lay very largely in Northumberland. Lord Dacre was Warden of the East and Middle Marches. Harbottle Castle, on the upper reaches of Coquet Water, from which he writes the dispatch to King Henry VIII, before quoted, was his official residence as Warden. His brother Philip was Captain of Norham, the "Castle of the Fighting Bischoppes" of Durham.* Himself or a brother was Bailiff of Hexham, one of the larger towns in the county. At the battle of Flodden we know (from the old English ballad of "Flodden Field") that Lord Dacre led the

"Horsemen light from Hesham-Leven,"

and (which is more to the point) we learn from his own

* The ancient arms of the See of Durham were a field azure with a cross *or*, so that would most likely be the badge of Philip Dacre, as the Captain of Norham Castle. Curiously enough, however, Mr Jerningham places on his title page to "Norham Castle" (1883) a shield azure a saltire *or*, so that if these were the arms of Norham they are exactly the same as those of Hexham. It would be interesting to know what the arms of the Castle were at that time. Mr Jerningham, who could throw light on the question, is at present abroad.

dispatches that the men raiding with him in 1513 and 1514 in the Hawick district were "men of Tynedale and Redesdale." In the 1513 raid, for example, Lord Dacre expressly states that his brother Christopher lay that night of his return "at the towre of Otterburne, and opone the morne to Hexham, and his folks in other townnes upon the water of Tyne, and on the third day at home as many as might git."

It had occurred to us that the design of the Hawick Flag was likely to have been that of an ecclesiastical house, but on ecclesiastical history we were fain to seek help outside. In sending to the Marquis of Bute the argument for the flag and seal, we asked him whether he could assist us to locate the flag device. This he very kindly did, and to him we are indebted for the first hint we received that there is great probability that the men who carried the original pennon of 1514 were men under the Priory of St. Andrew at Hexham. His Lordship wrote as follows:—

"I have an impression that in a recent architectural work on the Priory of St. Andrew at Hexham in Northumberland, which I have at Falkland, the arms of that house are given as azure a saltire or. And as its tenants were no doubt subject to military service, it is possible that the original flag captured by the young men of Hawick may have belonged to some of them." In a later letter he added:—"Dugdale Monasticon enumerates the landed property of Hexham Priory. They had thirty-five farms in Northumberland alone, and

on page OVIII. of the book on that Priory, published by the Surtees Society in 1864, there is a roll of 120 men summoned from some of their properties for military service on one occasion in the reign of Henry VIII. On page CLXXVIII. of the same book there is a wood-out showing that I was right in thinking that the arms of the Priory were a St. Andrew's Cross, and I feel pretty sure that I am also right about the colours. I am interested to observe in the index that at least two Hawick (Howyk) men, Robert and William, are enumerated among the Canons of that Priory." [There was, however, a "Howyke" in Northumberland.]

The muster-roll alluded to by the Marquis of Bute is in the Chapter House, York. Henry VIII. made a requisition "by loving letter" upon Archbishop Wolsey, and, in view of our conjecture as to the Hawick pennon, we extract the following from the Surtees Society Papers referred to by His Lordship. It shows the custom of the period, and is of great interest to us. We do not give the names of those summoned, except that name which appears at the call of Hexham Priory,

"The names of sich persons as he appointed to go to Berwick in the tyme of necessite when they be cald upon, of the regalie of Hexham, belonging my lord arch-busshop his Grace of York :—

"The Towne of Hexam, - - - -	19
East Alwende, - - - -	24
West Alwende, - - - -	20
The Forest of Newlandes, - - - -	13
The Wall, - - - -	9
Acom, - - - -	9
Prior Hexham Servauntes, - - - -	8
Gylbert Erington, 5 men for Erington, -	5"

The Hawick men (if they were Hawick men) who appear as Canons flourished *circa* 1297, and along with others were excommunicated for insubordination in 1306!

Our later enquiry has tended to establish the statement concerning the colours of the arms of this Priory, and there is little doubt that these were azure, a saltire *or*. They agree with the old colours of the Hawick Town Flag. Mr C. J. Bates of Langley Castle, Northumberland, to whom we were referred, confirms us as to the Priory arms, and thinks the colours are correctly given. He thinks it possible that the Hawick trophy may have been a pennon, bearing the device of Hexham Priory, and he corroborates what we have already stated concerning the close connection subsisting at this period between Hexham and the Dacres. Mr Gibson, a well-known antiquary of Hexham, corroborates the device and colours, and in addition informs us that the seal of the regality and of the manor of Hexham is azure, a monogram saltire-wise *or*—in reality the old arms of the Priory. To the interesting facts adduced by the Marquis of Bute, we may add that the tenants of this Priory were many times summoned for military service. And in particular we learn from the *Registrum Palatinum Dunelmense* that Edward II. made requisition on the Archbishop of York in 1311 for 100 armed

soldiers from his liberty of Hexham to proceed to the wars in Scotland. Doubtless they fought at Bannockburn. The Priory is of very old foundation. Hexham or Exilesham was a bishopric till 822. In 1269, we find it mentioned as "*in finibus Scotiae*" (*Annales Monasticae*), and it was doubtless in the domain of the Balliols.

It is almost beyond a doubt that tenants of the Priory of St. Andrew at Hexham were in the raid of 1514, and it is our conjecture that they carried a pennon, with the arms of their Priory blazoned on it, as a device or badge round which to rally, that it was captured, and that it was this trophy that became the first flag to do duty at the Riding of Hawick Common. Striking proof of the practice of tenants and retainers of religious houses wearing the arms of their houses is found in accounts of the Battle of Flodden, which describe the men of the Bishopric of Ely marching to fight with the arms of the See blazoned in gold on their breasts. A more likely statement of the case there cannot well be, and it is at least adequate explanation of the fact that the town of Hawick to this day flaunts a flag that bears the arms of the old Priory of St. Andrew, Hexham.

It has been remarked by occasional writers that the raiders of 1514 were not likely to have carried a pennon.

But they have entirely misunderstood the circumstances of the case. This raid, like that of 1513, was not a cattle lifting raid, in which, naturally, pennons and standards played no part. It was conducted by soldiers and a captain under the King's command. It was part of a deliberate scheme to cripple the Borderers, and to intensify the defeat of Flodden. It was open war, and there were pensils, pennons, and standards in plenty. In these very raids we are now treating of, the Dacres were encountered by six or seven Scottish standards and retreated. The ballad of "Flodden Field," from which we have already quoted, tells how the Earl of Home made a raid before Flodden had been fought. He and his men

"Entered in Northumberland
With banners bravely blazed and borne,
And finding none them to withstand
They straight destroyed both hay and corn."

In the Scottish raid of 1532, mentioned in Chapter I., three standards were "openly displayed." And yet on both of these occasions—differing from 1513 and 1514 raids—there was supposed to be peace between the two countries. When it is remembered how potent the standards, and in a lesser degree the pennons, were in rousing the devotion and loyalty of the soldiers, it will be at once admitted that standards, pennons, pensils,

and other flags were almost invariable in truly military attacks. The pensil, technically speaking, is a small pennon, and like the pennon was carried by an individual of less rank than the bearer of a standard. Pennons were, therefore, far commoner in battle. The first mention of our Town Flag in the Burgh Records describes it as a "pencell." This is in accordance with the truth of the case.

The conviction is thus irresistibly borne in upon us that the Hawick tradition of 1514 is a true account of an actual incident of the period. No false or fraudulent narrative could, we think, have emerged so excellently from searching enquiry. We have followed up the clue of the flag: and it leads us to facts which are in their turn corroborated by written testimony. The flag is almost conclusively traced to Hexham Priory, and yet the very fact of its so being traced brings us back again to the well-founded inference that it was actually carried by Hexham men by the banks of Teviot. For we have learned that Tynedale men were there in 1514. It is not possible to satisfy that type of mind which demands absolute proof; but the extreme probability here put forward will be sufficient for such as can read history with a truth and insight beyond the dry details of demonstrated fact.

CHAPTER V.

THE SEAL.

“ Now, for our consciences, the arms are fair
When the intent of bearing them is just.”

SHAKESPEARE

(*King Henry IV., Part I. Act 5, Sc. 2*).

THE question as to the true character of the Hawick Flag has been raised anew by the publication of “The Arms of the Royal and Parliamentary Burghs of Scotland” (1897) by the Marquis of Bute. The description given of the Arms of the Burgh of Hawick is unfortunately inaccurate in consequence of the conjectures of local historians and of an error made by Mr Wilson, Town Clerk, and not until now discovered and corrected. We have, therefore, been at some pains to clear up the matter, and may be pardoned if we quote from Lord Bute’s book the portion relating to Hawick *in extenso*. We can tell the story of the seal from start to finish, but in the first place we desire to call attention to the fact that the conjecture of Mr

Watson, adopted by Mrs Oliver, has now taken the shape of a simple statement that our Town Flag is the Flag of Scotland. We have already discussed this matter and need not do so again. In the seal, as printed by Lord Bute, the flag is not represented as it is in the seal as used in the Town Clerk's office, viz., as a plain flag, more or less pennon shaped, with date 1514, but as a square flag with the St Andrew's Cross, according to Mrs Oliver's description of it. There are other changes which we need not here allude to. Lord Bute's description of the Burgh Seal is as follows:—

Not recorded in the Lyon Office.

Argent, an altar, thereon the open Bible, both proper, between the Flag of Scotland—that is, azure, a saltire argent—inscribed with the date 1514 or, waving towards the dexter from a staff of the last, and on the sinister, a man's heart gules, ensigned with an imperial crown or. On a chief sable, a lamp with two branches or, enflamed and irradiated proper.

The tinctures are supplied to us by the Town Clerk from the work of his predecessor, Mr James Wilson, author of "The Annals of Hawick."

The general allusion seems to be towards the Church, hence the altar (which might be drawn according to taste), and upon it the open Bible, the combination thus signifying the Word and Sacraments. The flag commemorates the defeat of a body of English by Burgesses of Hawick at Hornehole, in the neighbourhood of the town, in A.D. 1514. There does not seem to be any historical records of this skirmish. The traditional account will be found in Mrs J. Rutherford Oliver's "Upper Teviotdale," p. 98, who says, p. 100: "The remembrance of the exploit achieved by the Hawick

'Callants' has been cherished with peculiar pride by the townsfolk, and is still commemorated at the annual festival called the Common-Riding. It is held in the first week in June or the last Friday of May, Old Style, and, as its name indicates, includes the practice of riding round the common lands and property of the burgh. A flag or banner is carried by a young man on horseback who is called the 'Cornet,' and a song descriptive of the battle of Flodden and the subsequent encounter at Hornshole is sung. The flag which is carried on these occasions is a blue square with the St. Andrew's cross and the date of the fray, 1514, inscribed thereon. It is a copy of an ancient flag." Mrs Oliver gives a great deal more interesting matter regarding this ceremony. She remarks that Mr David Watson, in a paper read before the Hawick Archaeological Society in June, 1867, pointed out that the flag being the Flag of Scotland, cannot have been, as some have supposed, captured from the English at Hornshole or elsewhere. It is simply the national flag, and the date is inscribed upon it in the same way as is often done on the colours of regiments.

The heart is of course the Royal heart of Robert I., the famous bearing of the noble race of Douglas, a branch of whom—that of Queensberry—have the title of Lord Douglas of Hawick. The first Charter of Hawick was granted to the inhabitants by Sir James Douglas of Hawick, great-grandfather of the first peer, in 1537, and confirmed by Queen Mary in 1545. We conjecture that the Town Flag and the monuments of the Douglas family very likely formed prominent objects in the Parish Church, and hence their association with the altar and the Bible. And this speculation is confirmed by the next consideration. The burning lamp upon the chief *sable* is in allusion to a particular stipulation made by Sir James Douglas in his charter, in which the *reddendo* includes "as also finding and maintaining one lamp or pot of burning oil before the great altar of the Parish Church of Hawick in the time of High Mass and evening prayers on all Holy days throughout the year, in honour of our blessed Lord and Saviour Jesus Christ, for the souls of the Barons of Hawick, founders of the said lamp, and their successors." The lighting of this lamp in

memory of the dead, as thus directed, is of course in conformity with the custom of keeping a lamp or candle burning in the presence of a corpse, and on certain anniversaries, &c., which is universal among Jews, and is either derived from or alluded to in Prov. xx. 27, "the spirit of man is the candle of the Lord," whence the lamp in memory of the dead, which burns perpetually in synagogues before the ark containing the Law. The practice has been very widely adopted among Christians, and the insertion of this lamp on the chief *sable* in the Hawick arms certainly represents what would have been the thought which the actual lamp would have symbolised in the mind of Sir James Douglas—the light of faith illuminating the darkness of the grave. Mr Wilson, "Annals of Hawick," p. 326, says that "after the Reformation such stipulations were held to be superstitious, and so not obligatory." This view is not universal, as there is at present a memorial lamp of this kind still kept burning in a family chapel in the Church of St. Sebald in Nuremberg, which has been Protestant ever since the Reformation.

*Mr Wilson says that the shield is surrounded by the collar of the Thistle. This is a feature to which we find no parallel anywhere else. He also says that the shield is "further embellished by two banners, the dexter charged with the saltire, and the sinister another of the same surmounted with an open crown." Of these two flags thus standing in place of supporters, the dexter is evidently simply the Flag of Scotland, and the sinister a very peculiar variant of that flag, of which we are aware of very few examples. There is one in the painted decorations of the time of Charles I. on the ceiling of the Chapel Royal of Falkland Palace, and another in the picture representing James VI. as a child praying beside the tomb of his father in the Abbey Church of Holyrood, where this flag is represented as hanging from the wall. Mr Birch, in his "Catalogue of Seals in the British Museum," also mentions that this peculiar flag occurs on the Great Seals of Mary Queen of Scots, iv. Nos. 14,830, 14,834, and of James VI., *ib.* 14,837. It was perhaps a variation of the national flag when actually used by the sovereign. The crown should of course be gold.*

The Marquis of Bute has been misled by his local informants, who themselves have been misled by Mr Wilson. The latter of the portions italicised is founded on a passage in the "Annals of Hawick" (p. x). In that passage Mr Wilson purports to give a description of the Seals in the Hawick Charter Chest, furnished him by Mr Henry Laing, and, as he says, extracted before publication from that gentleman's "Descriptive Catalogue of Casts of the Royal Baronial and Ecclesiastical Seals of Scotland" (1850). Mr Laing gives no such description in that book, nor could he well have done so with the true facts before him as he had. Mr Laing guessed that the seal was entirely modern, a fact Mr Wilson does not seem to have thoroughly understood, although Mr Laing so wrote him, and although the seal was actually ordered by his predecessor, Mr Oliver, and executed from his suggestions. The manuscript of Mr Wilson (which we found in a bundle of papers in the keeping of the Town Council) used by him in the preparation of the "Annals" at once reveals the error. The printed version in the "Annals" accredits to the Seal of the Burgh of Hawick part of the description which really belongs (and in the manuscript is made to belong) to the Seal of Queen Mary.

Mr Laing has the very words which occasion all the mystery (when given as pertaining to the Hawick Seal) in his description (p. 14) of a Queen Mary's Seal. These are (besides the crosses pattée and the collar of the Thistle, which also refer to Queen Mary's Seal) the words "further embellished by two banners, the dexter charged with the saltire, and the sinister another of the same surmounted with an open crown." These have dropped out of the description of Queen Mary's Seal (the Seal on our Confirmation Charter), and have been wrongly added to the Burgh Seal, either through a printer's error or a curious mistake on the part of Mr Wilson.*

We can go farther, and we give in the Annals under date, 1817, two very interesting letters which show

* The following is the manuscript found among Mr Wilson's own papers, which doubtless he intended to print, but erred somehow and did not. That portion which we have enclosed in brackets so [] is what has been accredited by mistake to the Hawick Burgh Seal and so occasioned all the mischief. Pages x. and xi. of his "Annals" so far as relating to the Seal of Queen Mary's Charter and the Seal of Hawick Burgh should therefore read corrected as follows :—

" MARY, A.D. 1545.

The Queen is here seated on a throne of state with a sceptre in her right hand and her left lying on her breast. The throne is elaborately embellished with carved ornament in

when, how, by whom, of what material, and at what cost the Burgh Seal was made. We much regret that the blunder was not detected sooner, for it is a pity that so thorough a book as this of the Marquis of Bute, and one likely to be so often referred to, should not have had a perfectly true and accurate description of the Burgh Seal. But it was the publica-

that mixed Italian style prevailing at the time and now called Elizabethan. The inscription is imperfect but may be read
Maria Dei Gratia Regina Scotorum.

"COUNTER SEAL OF THE LAST.

The Royal Arms of Scotland. Supporters, two unicorns chained and gorged with a crown. Above the seal, an arched closed crown of fleur-de-lis and crosses pattée, the arches meeting and terminating in a ball surmounted with crosses pattée. [The shield is surrounded by the collar of the Thistle, and further embellished by two banners, the dexter charged with a saltire, and the sinister, another of the same, surmounted by an open crown. Behind each supporter is] a thistle crowned. The inscription is not very distinct but can be read

Salvum Fac Populum Tuum D'ne.

"SEAL OF THE BURGH OF HAWICK CIRCA 1814 (SHOULD BE 1817).

The Common Seal of the Burgh of Hawick has the arms of the Burgh, viz., Argent an altar, thereon an open book (the Bible?) between a pennon waving towards the dexter inscribed with the date 1514, and a man's heart imperially crowned all proper fesswise, and on a chief sable a lamp with two branches enflamed proper. On a garter surrounding the shield is inscribed

Sigillum Burgi de Hawick," etc.

tion of it that suggested a search for the missing supporters and embellishments of the Hawick Shield, and the search revealed the blunder. We do not seem to have had a Common Seal before this one, and this one dates no farther back than 1817.

HAWICK COMMON,
Looking North.

FROM THE NEW WAH
1900-1901



CHAPTER VI.

RETROSPECTIVE.

"Thy ain fire, my friend, sae it be but ane gleid,
It warms well and is worth gold to thee;
And Solomon sayis, gif that thou will read,
'Under the heaven it cannot better be
Than aye be blithe and live in honesty.'"

ROBERT HENRYSON (*end of 16th century*).

IN the preceding chapters we have sketched briefly, but far from exhaustively, some features of our old town history in so far as regards the Town Common, the Charter, the Flag, and the quite modern Seal. And we have done so in full faith and hope that any such sketch, no matter how inefficiently performed if faithfully and honestly performed, must be of great interest to all the townfolk. Our effort has been guided by one motive throughout, to show the real antiquity of the Burgh of Hawick, and to indicate, at least, its true place in history, not as a mere appendage of this or that noble family, but with a story to which theirs is but a

tale of yesterday, to afford by hint and inference some idea of the old town that has stood here while illustrious families have arisen and fallen around it, and to clear away that modern sceptical commentary that has defaced its more recent story. We may be pardoned, then, if we append to the fragmentary labours of the foregoing pages some brief narrative of the history of Hawick. In detailed fragments it has already appeared in print in other books, but we desire to gather them briefly together, the better to impress the reader with the feeling of reverence towards the past that has impressed ourselves.

We should have liked, above all, to have given some account of the old Burgh as it stood before its re-erection in 1537: to have known what the old inhabitants were like, what went on among them, and how they fared in the rapidly changing events of Scottish history in the troubled early centuries. It may be true that the people are happy whose annals are unwritten—and if it were all the truth, we might congratulate the old and historically lost Burgh of Hawick—but the adage cannot console us for the unhappy fact that our own Charter tells us of, that the Records have been lost by the incursions of “Englishmen and of thieves.” Peace to their ashes, but the devil

take their works! We emerge into history, in the narrower sense of the word, with the year 1537, and all that is disclosed to our eyes as links with the unknown and mist-enshrouded past are the broken threads of old ceremonies and stray allusions from without. Yet so long as the Moat stands Sphinx-like above the town, overlooking the broadening valley of Teviotdale, so long does there remain in fixity the foundation of irresistible inference of the existence of a town at the junction of Teviot and Slitrig. There was a town there when the Saxon came; it stood there when the Norman baron "rushed in;" it remained all through the savage fight for Scottish Independence. The Lovels, who fought for Edward, and who, almost alone, of all Border families, were faithful unto death to the hand that created them, though traitors to the land of their adoption, fought here for the English King. We cannot tell what the little town thought through it all; but we may safely conclude that here, as elsewhere, the heart of the people beat for Scotland. The great Douglas family established itself by its side, and that, too, has passed. The Buccleuchs followed in 1675; till now the old-time days of patronage have passed away, and towns can defend themselves as few families, no matter how powerful, can. The tables are turned.

The year 1537 itself, however, belongs to old history to-day. Three hundred and sixty years have passed since James Douglas of Drumlanrig granted his Charter and signed it in Edinburgh. They have been troubled years—years of fire, bloodshed, famine, and plague; years of slow adaptation to the changing conceptions of self-government; years of material progress and greater plenty, and years of peace. The Burgh that set out anew in 1537 on its long journey to our present day has seen many stirring sights in the course of it. Ten years only had passed when the English burned it to the ground (and all its corn), leaving only the towers. A right good priest, James Young, and ten good men were burned to death in their tower, for they would not yield, and two other men were slain. Three towers were destroyed. In 1565, eighteen years after 1547, the town was burned again by the “Brodies,” probably fellow-Scots aweary of peace. Five years later—in 1570—Lord Hunsdon,* leading the English, laid waste the country round it, and the inhabitants burned it

* This Lord Hunsdon was Governor of Berwick and father of Robert Cary, who, on the death of Queen Elizabeth in 1603, rode the famous ride from London to Edinburgh to carry to James VI. news of his accession to the throne of England. He received for his pains the Stuart recompense—ingratitude.

themselves rather than let it supply their foes with shelter and forage. A noble act; as to which, let us add in passing, it is too bad to hint that the people so acted in imitation of Buccleuch, as one historian does. The reverse is more "probable," for their turn came in the line of the enemy's march *before* Braxholme. Before this date, in 1563, the Earl of Murray had offered up a holocaust of thieves, about their "lawful" business no doubt, on the shrine of law and order, and eighteen of them were drowned in the river. The year 1575 brought a congenial retaliatory episode—"The Raid of the Reidswire," and the Hawick men, led by "Gladstain, good at need," had an opportunity, apparently eagerly taken, of delivering a return blow. But they were hard pressed by the home authorities later, to give up their plunder. The close of the sixteenth and the opening years of the seventeenth century brought more peace, but stirring days were to come. From the year 1638 we have Burgh Records, at first scanty but supremely welcome. From this time we have some knowledge of the old town's inhabitants: what employments they had: their opinions: the character of many of them, their quarrellings, squabbles, and bickerings: how they lived, and spoke, and went about. We have now some true

history of the people. We catch a stray glimpse of the great Puritan Revolution. The Great Protector himself—old Oliver—was here as Carlyle (*Cromwell*, vol. ii. p. 67) conjectures over Sunday, the 7th October, 1648. If it be so, his is the greatest figure that ever passed through its streets. In 1652, some of his soldiers—that most famous of all English armies—were in the town: and one stout old cavalier of Hawick refused to act as their guide to Langholm. In June, 1679, there occurred another noteworthy event—a siege of the old Tower by a party of Covenanters led by Turnbull of Standlaw. And they took it—the grim old heroes! and they paid the penalty at Bothwell Brig and elsewhere later. Under compulsion, no doubt from superior powers, the town in 1681 repudiated the Solemn League and Covenant, and shortly afterwards Graham of Claverhouse with the sad, melancholy, beautiful face—“bluidy Clavers”—passed through the town. The Covenanting spirit, however, was strong in the district, and one of the Covenanters—George Deans—refused to be Claverhouse’s express to Galashiels. He menaced the bailie who commanded him to go, the records say, with “ane great stone.” By this time the affections of the town of Hawick, as of most of Lowland Scotland, were quite alienated from the impossible House of Stuart. The

accession of George I. brought no outbreak of feeling, nor did either of the Royal claimants procure sympathy here. The lowlander has never loved the highlander, and the presence of half-savage hordes of clansmen would effectually quench what lingering spark of loyalty there might be to the exiled dynasty. Not the less, however, did the townsmen dislike the English regiments. In 1715, many of them had to take the luggage of "Pitts-town's regiment" to Lauder, and they did not care about it. On Hawick Muir, in sight of England, James' highland host mutinied and refused to go further. The district was, doubtless, supremely thankful when they went. Prince Charlie found no help in Hawick in 1745. That forlorn and last appeal fell unheeded. After 1745 comes the modern era. Tumults, riots, disorders, there are in plenty; but never again the least approach to the dignity of war and of life struggle. Stray indications there are throughout all the eighteenth century of Scots abroad who had left their native Teviotdale—and fared worse. Very striking are the collections in the Parish Churches for countrymen held for ransom in captivity by the pirates of Algiers. In the last year of the century, and in the beginning of this, we may see how eagerly the old Burgh read and heard of the progress of that deadly grapple with Napoleon that cost

Britain so much. There are the illuminations for the Peace of Amiens, 1802: for the victory of Trafalgar in 1805: of Leipsic, 1813, and of Waterloo and the downfall of the great Corsican in 1815. Thence, through times of hardship, scarcity of bread, and political disaffection, through times of commercial revolution, material growth and prosperity, the town story runs various and many-coloured to our own day: contributing now, as always, its own characteristic quota to the history of our people. Thus gradually does it change from the old Burgh with its hard struggle for existence and its own narrow outlook to the town with its sympathy for, and share in wider interests and national movements, with links and ties spreading over the world, with its own allotted space in an Empire.

The purpose of this book will have been accomplished if it has served to show forth the facts, and indicate the truth concerning the subjects of which it treats, and if it secure the attention of the reader to the fact that the history and traditions of so old a town are very interesting, worthy of study, and well able to repay it. We have traced the old Common, and we have described at length the old ceremony of the Riding of its "Meiths and Marches." Having considered the tradition of

HAWICK COMMON,
Looking South.

REMARKS ON THE

100th Anniversary



1514 in no hostile way, but sympathetically, taking it for what it is, and as it is, we have made an endeavour to show what the history of the flag proves. We have traced it back beyond 1707, and established the identity of one of the most interesting relics we possess with the oldest known Common-Riding Flag. Whether it be the copy of a trophy or not (and we are of decided opinion that it is), it is a very interesting flag, and we may, with great fitness and truth, apply to it the words of the old Council Records: it carries us back through "many generations and hundreths of years past." We have seen that the Town Flag of Hawick has been declared to be simply one of the flags of Scotland. We have shown that it is not. We believe in the old tradition concerning it; we think it a copy of the captured pennon of 1514; and, if we may be allowed to borrow the language of the critics, it may be added, that until it is proved to us beyond controversy that it is not, and cannot be, we see no reason to disturb the old boast and the old belief.

PART II.

THE DACRE RAIDS BEARING ON THE TRADITION,

AND

ANNALS:

CONSISTING OF THE TOWN CHARTER OF 1537, EXCERPTS
FROM BURGH RECORDS, &c., RELATING TO THE COMMON,
THE FLAG, THE RIDING OF THE MARCHES, &c., ARRANGED
CHRONOLOGICALLY.

BOAST ! HAWICK, BOAST ! THY STRUCTURES REAR'D IN BLOOD,
SHALL RISE TRIUMPHANT OVER FLAME AND FLOOD,
STILL DOOM'D TO PROSPER, SINCE ON FLODDEN'S FIELD,
THY SONS, A HARDY BAND, UNWONT TO YIELD,
FELL WITH THEIR MARTIAL KING, AND (GLORIOUS BOAST !)
GAIN'D PROUD RENOWN WHERE SCOTIA'S FAME WAS LOST.

LEYDEN.

THE DACRE RAIDS BEARING ON THE TRADITION.

Annotations bracketed thus []

THE RAIDS OF 1513 AND 1514.

[The Battle of Flodden fought 9th September, 1513.]

THOMAS, LORD DACRE, TO KING HENRY THE EIGHTH,
13TH NOVEMBER, 1513. (*Ellis' Original Letters.*)

PLEASE it your Hignes to knowe I have receyved your most honourable letters of your gracious thanks for my pure service done to your Grace according to my dieuty, which is to me the most singler comfort and rejoysing I can have; for by the same I well perceyve your Hignes regardeth not the sinistre reaport or rumor surmised ayenst me, ne your Grace regardeth or geveth ony credence thereunto, whereby I am bounde the rather to doun to your Hignes the most laudable and acceptable service, I can or may do, and so shall undoubtedly at all my power; and where as by the

same your most honorable letters I understand your pleaser and commaundment is that I shold effectually procede to the spedy execucion of ij. Roods upon the West and Medyll Marches to the most annoyaunce of the Scotts that I possibly may, like it your Grace to knowe.

Opon Thuresday last past I assembled your subgeitts in Northumberland to the nombre of a thousand horsmen and rode in at Gallespeth and so to the watre of Kale, two myle within Scotland, and there set furth two foreyes. My broder, Philipp Dacre, with ccc. men, which burnt and destroyed the town of Rowcastell with all the cornes in the same and thereabouts, and wan two towres in it, and burnt both roffe and flores; and Sir Roger Fenwike, with ccc. men, burnt the town of Langton and destroyed all the cornes therein, which townes er in the hert of the countre, two myle beyond Jedworth, opon the watere of Chevyot.* And I come with a stale† to a place called the Dungyon, a myle from Jedworth, and so went to the Sclater furd on the water of Bowset,‡ and there the Scotts persewed us

* Teviot.

† A reserve, the main body.

‡ There is a place marked Bowshot on the Ordnance Survey Map near to Abbotrule. On the top of the hill adjoining, marked Bowshot Hill, a solitary ash tree is the site of what is locally

right sore, there bekered with us, and gave us hand stroks; there came three standards to bak theym, that is to say David Karr of Fernehirst and the laird of Bondgedworth upon the oon side and the Sheriff of Tevidale* on the othre side with the nombre of DCC. men or mo. The lard of Walghope was hurt there with oon arrowe and his hors slane; Mark Trumbill was strikken with a spere and the hede left in hym, his hors was won, and diverse Scotemen were hurt there. And so we came forwards where we saw my broder, Syr Cristofer Dacre, with oste arrayed at a place called the Bellyng,† which was to us no litill comforth and to hym grete gladnes seying the small power we were of at that tyme.

My said broder come in at Cressopbrige‡ and there entred the Medyell Marches and so come thorow

called "Old Bowset." From the Valuation Book, James and Helen Turnbull were proprietors of Bossithill in Abbotrule Parish in 1643. There can be little doubt that Bowset Water would be the burn that washes the base of this hill, although a previous writer hazards the conjecture that Bowset was probably Bowmont Water, at least ten miles away.

* Douglas of Cavers.

† The Belling Hill lies about two miles south-east from Bowset Hill.

‡ Kershope.

Ledesdale to the Rughes wyre,* xiiij. myle within the ground of Scotland, and there he put furth two forreyes. Syr John Ratclif, with fyve hundreth men in oon, which burnt the town of Dyker,† sex myle from the said swyre with a towre in the same, thei layed corne and straw to the dore and burnt it both rofe and flore and so smoked them out. Also the said Syr John and his company burnt the townnes of Sowdon‡ and Lurchestrother§ with a towre in it, and distroyed all the cornes about theym, and toke diverse prisoners with much insight and goods. Nicholes Haryngton, Nicholes Rydley, Thomas Medilton, and George Skelton, with othre to the nombre of fyve hundreth in the othre forrey, burnt the towne of Hyndhalghehede|| and a towre in the same flore and rofe; and in likewise the townnes of West Sawsyde¶ and Est Sawsyde with a pele of lyme and stane in it; and my said broder, Sir Cristofer, with two thousand horsmen and cccc. fute men with bowes for savegard of thost in straits come in a stale to Dykerawe; and there the said forreyes releved to hym, and so come

* From the description, this must have been somewhere between the heads of Liddel and Jed Waters.

† Dykeraw—there are still the ruins of an old peel here.

‡ Southdean.

§ Lustruther.

|| On the left bank of the Jed near Fawsida.

¶ Fawsaide, on the southern slopes of the Belling Hill.

forward and met me. We had not rydden above the space of a myle when we sawe the Lord Chambrelane* appere in our sight with iijm. men and four standerds; the othre thre standerds resorted to hym and so the countre drew fast to theym. We put us in arreye, and come homeworde, and rode no faster then nowt, shepp, and swyne that we had won would dryve, which was of no gret substance, for the countre was warned of our comyng and the bekyns burnt fro mydnyght forward. And when the Scotts had geven us overe we retourned home and come in at the Redeswyre. I come to Harbotill† at mydnyght; my broder, Syr Cristofer, lay that night at the towre of Otterburne, and opone the morne to Hexham, and his folks in other townnes upon the water of Tyne, and, on the third day at home as many as might git.

Sir, I se not the gentilmen of the countre in redynes for defence of your bordoures, for certen of theym to whome I had geven warnyng as my Lord Ogle which promised to com to me, the constable of Alnewike and othre, trustyng thei wold have bene glad to do your Grace service accordingly as thei have done to your

* Lord Home.

† Harbottle Castle was, for a long time, the residence of the English Wardens.

Wardens in tyme of werre, come not to me at the place appoynted, whereby I was not accompanied as I thocht to have bene. I was councelled and advised by my guyds to have rejoynd my purpose, and so wold have done, but oonly that I had appoynted with my broder, Sir Cristofer, to mete hym in Scotland, for he departed fro me to the West Marches to bryng my folks from them whome I might not disappoynt for I had no space to gif him warnyng, it was xxx. myle fro me and more and els I had not keped my purpose which now is performed, thanked be Jhesu, and all your subgietts in savety but a servaunt of myn which was killed there, and two Scotts were slain and many othre hurt the same tyme.

Pleas it your Grace, as for the rode to be made opou your West Marche, I can not se how it can be done conveniently unto the next light,* for two consideracions, oon is bycause I dar not be absent of this Medill March during this light for fere the Scotts schold distroye and burne the countrie in myn absence, which I regard gretly; and oon othre is that my servants horses which come to this rode was sore labored for thei rode xxviiij. owres without any bayte. And in the next

* Meaning the next full moon, the favourite time for raiding.

light, I shall, God willing, performe the said rode; and in the meane tyme shall cause small rodes to be made, which shal be as gret annoyaunce to the Scotts as a great rode should be, and thus shall yor money be employed to the best I can and for the grettiest hurt and destruccion of the Scotts; for I shal be as goode a husband thereof as I wold be of myn awn, and alwey I shal be ready to gif accompt of the same at your pleasure.

Also, please it your Grace, me seamnes it were necessary that yor letters of commandment were direct to my Lord of Northumbreland and to my Lord of Clifford, to cause their tenaunts gif attendance opon your Wardens, as thei have bene accustomed to do in tymes passed, for as I understand my Lord Clifford's tenaunts ere warned not to ride without his speciall commaundment.

As for newes of Scotland, like it your Grace to know, John of Barton, which passed into Fraunce in the navye of Scotland, landed at Kirkobrighe and ther toke seknes and disceced of the same.

There hase bene a gret Councell at Saynt Johnstone and all the Lords of Scotland was there with the Quene. It is determined by theym that the Bisshop of Aberdene shal be Archbisshop of Saynt Andrewes, the Bisshopp

of Catnes shal be Bisshop of Aberdene, a broder of Therl of Adthills shall have Catnes. The Abbaye of Arbrothe is geven to Master George Douglas, Therl of Anguyse son, the Abbaye of Dunfermlyn to Master James Hebburne, the Priory of Coldyngname to the Lord Chambrelane broder, and a broder of David Karrs of Farnehirst is entred by force into the Abbaye of Kelso and enjoyes it by intrusion.

Also it is agreed by the said Councell that the Castell of Sterling shal be vetelled and fortified in all hayste possible and the Lord Borthwike shal be capitane of the same, and have the yong King in his keping there, and he not to be removed without assent of the hole Councell.

At the same Councell a communication was had which Lords shold have the rewl of the lands forwell and saute of the realme, but thei agreed not thereopon, and so departed from thens at that tyme. Therl of Aren, Admirall of Scotland, is commen home with the shippes of Scotland, and a French Knight with hym which has broght writtings and credence from the French King and the Duke of Albany; what it is I know not as yit, bot I shall endeavor me to git knowlege thereof. Thre of the grettest shippes of Scotland are left in France to the sprynge of the yere,

to the extent thei may assist the French navye as it is supposed.

The gret shipp of Scotland was ron on ground, bot sho is recovered as thei say or theire Admirall departed. The Scottishe soldiours which be comen home makes evill reoport of the French King, sayng thei were not well entreated there; and as newes shal be occurrant in thies parties, your Grace shal be advertised by the grace of Almighty God whom I besech to preserve your most honorable estate. At Harbotill the xiiijth day of Novembre at vj. of the klok in the mornyng.

Your humble subgyet,

THOMAS DACRE.

TO THE KING'S HIGNES.

[Considering the large force at his command (over four thousand), it is quite apparent that this raid was intended by Lord Dacre to be more sweeping and destructive than it turned out. But for the fortunate appearance of his brother in the nick of time, at the Belling, with the larger division which came through Liddesdale, disaster might have overtaken Lord Dacre's own division at Bowset, where he himself admits he was hard pressed (most probably by the Turnbulls), the prompt appearance, in response to the blazing of

the beacons on the hill tops, of Douglas of Cavers, Kerr of Fernieherst, and Lord Home, with their forces, compelling him to abandon his purpose and retreat with his united forces by the Reid Swire into England. Lord Dacre was more successful against his "mortall enemy" in 1523, when he stormed and overthrew Fernieherst Castle. The reader will note that Dacre engages to undertake several smaller raids. The King appears to have entrusted Lord Dacre with funds for the special purpose of organizing these incursions "for the greatest hurt and destruction of the Scots."]

THE RAIDS OF 1514.

THE account of these raids is given incidentally in a letter of Lord Dacre to the Council of England of date 17th May, 1514. (Pinkerton's History, ii. app. p. 459.) The entire letter is extremely interesting but, unfortunately, by no means relevant to us. We therefore extract the following (slightly modernised). Lord Dacre defends himself against charges of negligence and even collusion with the Earl of Home, Chamberlain of Scotland.

"My Lords, since my beying with the King's Highnes at Windesore in December last passed, I neyther trysted nor met the Chamberlain of Scotland, save once in February last, that I met him at Coklawe, upon the Middill Marche, at the instant desire of sundry our Souveraine Lords' subjects for the ransoming and getting to liberty their kynnesmen." He then tells how he had fought with Home at Flodden, how many kinsmen of Home he and his men had slain, how Home had taken prisoner his brother Philip, and so on. He says, "for they love me worst of any Englishman living, be reason that I fande the body of the King of Scotts, slayne in the felde, and thereof advertised my Lord of Norfolke be my writing, and thereupon I brought the corps to Berwyke." Many slanders had been uttered against him, more particularly he had not been successful in his espionage of Scotland. He denies this, but adds that "there is soo gret brutalnesse, mutabilitie, and instableness in the Council of Scotland that truly no man can or may trust them, or their sayings or devises," He writes that he has kept the Borders as well as a "poor baron" could, as well as great Earls have done. These Earls won't help him or let him have men. Yet they blame him. He wishes Lord Darcy to come and be Warden or any other person. Not much harm has been

done in England, everything is as comfortable up to the very Border as ever he knew it to be. "And for one cattle taken by the Scots we have taken, won, and brought away out of Scotland a hundred, and for one sheep, two hundred of a surety. And as for townships and houses burned in any of the said East, Middle, and West Marches within my rule, from the beginning of this war unto this daye, as well as when the late King of Scots lay in the same East Marches, as at all other times, I assure your Lordships, for truth, that I have and has caused to be burned and destroyed six times more towns and houses within the West and Middle Marches of Scotland, in the same season, than is done to us, as I may be trusted and as I shall evidently prove.

"For the water of Liddle, being twelve miles of length within the Middle Marche of Scotland, whereupon was a hundred ploughs; the water of Ludder, in the same Marches, being six miles in length, whereupon was forty ploughs; the two towns of Carlangriggs with the demaynes of the same, whereupon was forty ploughs; the water of Ewse, being eight miles of length, in the said Marches, whereupon was twenty-seven ploughs; the head of the water of Tevyote from Branksholme up into Ewse doores, within the same Marche, being eight miles in length, whereupon was twenty-four ploughs;

the water of Borthwick, within the same Marche, being in length eight miles, that is to say from Borthwick mouth to Craike Crosse, whereupon was a hundred ploughs; and the water of Ale, from Askrige (Ashkirk) to Elmartour (Alemoor Tower) in the said Middle Marches, whereupon was fifty ploughs; lies all and every of them waste now, and no corn sown upon none of the said grounds, which grounds is over and beaydes the gret rode that I made in the said Middle March upon Martilmas day last past, the contents of which I wrote to the King's Grace by poste."

He then describes a savage raid on the West Marches and Annandale. Thirty-four towns were destroyed, including Annand (Annan) and Langhane, and Dacre makes the significant remark that all these and Esk water, to the extent of six miles, "where there was in all times past four hundred ploughs and above, which are now clenely wasted, and no man dwelling in any of them at this day, save in the towns of Annand, Shepill, and Walghopp. And so I shall continiwe my service with diligence, from time to time, to the most annoyance of the Scots, and neyther spare for labour, pain, nor charge, to the uttermost of my littell power." The letter is dated from Kirkoswald.

[Two things should be noted by the reader. Firstly,

that Lord Dacre complains that the Earl of Northumberland, Lord Darcy, and others holding Berwick, Alnwick, Wark, and a great many places would not help him nor send him men. This restricted him to Cumberland and to Tynedale and the Hexham district for his supplies of men. And secondly, that the language leads us to infer that other raids may have taken place under his leadership in this year. As Lord Dacre was a fairly voluminous and very capable letter writer there may easily be letters, unknown to us, which might place the Hawick tradition in a light even clearer than this cast by the foregoing letter.]

THE BURNING OF JEDBURGH AND SIEGE OF FERNIEHERST, 1523.

THE following graphic account of a characteristic exploit of the period is perhaps scarcely relevant to the subject, but we publish it because it is so characteristic, and because it recounts one of the last exploits of the famous Lord Dacre, and sheds considerable light on his personality and on the beliefs of his time. So thoroughly does Surrey seem to relish Dacre's discom-

future, that we feel certain, had he been in the chief command at the Hawick Raid of 1514, we should have known more to-day of the defeat of one of Dacre's divisions at Hornshole.

THE EARL OF SURREY TO CARDINAL WOLSEY AFTER
THE BURNING OF JEDBURGH, A.D. 1523. (*Ellis' Original
Letters.*)

Plesith it your Grace to be advertised that upon Fridaye, at x. a clok at nyght, I retorned to this towne, and all the garrysons to their places assigned, the busshop-riche men, my Lorde of Westmerland and my Lord Dacre, in likewise every man home with their companys without los of any men, thanked be God, saving viij. or x. slayne and dyvers hurt at skymishis and saults of the town of Gedworth and the forteresses: whiche town is surely brent, that noo garrysons ner none other shal be lodged there unto the tyme it be newe buylded; the brennyng whereof I commytted to twoo sure men, Sir William Bulmer and Thomas Tempeste.

The towne was moche bettir then I wened it had been, for there was twoo tymys moo howses therein then in Berwike, and well buylded, with many honest and fair howses therein, sufficiente to have lodged M. horsemen in garryson, and six good towres therein: which

towne and towres bee clerely distroyed, brent, and throwen downe. Undoubtedly there was noo journey made into Scotland in noo man's day, leving with soo few a nombre, that is recownted to bee soo high and enterprise as this, bothe with thies contrey men, and Scottishmen, nor of truthe so moche hurt doon ; but in th' ende a great mysfortune ded fall onely by foly, that suche order as was communded by me to bee kepte was not observed, the maner whereof hereafter shall ensue.

Before myn entre into Scotland I appointed Sir William Bulmer and Sir William Overs to be marshallis of th' army, Sir William Bulmer for the vangard, and Sir William Overs for the reregard. In the vangard I appointed my Lord of Westmerland as cheif, with all the busshopriche, Sir William Bulmer, Sir William Overs, my Lord Dacre, with all his company ; and with me remayned all the rest of the garrisons and the Northumberland men. I was of counsaill with the marshallis at th' ordering of our lodging, and our campe was soo well enviorned with ordynaunce, carts, and dike, that hard it was to entre or issue, but at certain places appointed for that purpoos, and assigned the mooste commodious place of the said campe for my Lord Dacre company, next the water and next my Lord of Westmerland. And at suche tyme as my Lord Dacre

came into the feld, I being at the sault of the abbay, whiche contynued onto twoo houres within nyght, my said Lord Dacre wold in nowise bee contente to ly within the campe, which was made right sure, but lodged hymself without; wherewith at my retorne I was not contente, but than it was to late to remove. The next day I sent my said Lord Dacre to a strong hold called Fernherst, the lorde whereof was his mortall enemy, and with him Sir Arthure Darcy, Sir Marma- duke Constable, with viijc. of their men, one cortoute, and dyvers other good peces of ordynaunce for the feld. The said Fernherst stode marvelous strongly within a great woode. The seid two knights, with the moost parte of their men, and Strikland, your Grace's servaunte, with iijc. Kendall men, went into the woode on fote with th' ordynaunce, where the said Kendall men were soo handled that they found hardy men that went noo fote bak for theym. The other twoo knights were alsoo soo sharply assayled that they were enforced to call for moo of their men, and yet could not bring th' ordynaunce to the forteresse unto the tyme my Lord Dacre, with parte of his horsemen, lighted on fote, and marvelously herdly handled hymself, and finally, with long skirmishing and moche difficultie, gut forthe th' ordynaunce, wan the howse, and threwe downe the

same. At which skyrmyshe my seid Lord Dacre and his brother, Sir Cristofer, Sir Arthure, and Sir Marmaduke, and many other gentlemen, ded marvelously hardly, and found the best resistance that hath be seen sith my comyng to theis parties, and above xxx. Scottis slayne, and not passing iiij. English men, but above sixty hurt. Aftir that, my seid Lord retorning to the campe wold in nowise bee lodged in the same, but where he laye the furst nyght; and, he being with me at souper about viij. a klok, the horses of his company brake lowse, and sodenly ran out of his feld in suche nombre that it caused a marvelous alarme in our feld; and, our standing watche being set, the horses cam ronnyng along the campe, at whome were shot above one hundred sheif of arrowes and dyvers gonnys, thinking they had bee Scotts that wolde have saulted the campe. Fynally, the horses were soo madde that they ran like wild dere into the field, above xvc. at leest, in dyvers companys; and in one place abone fifty fell downe a great rok and slewe theymsel, and above two hundred and fifty ran into the towne, being on fire, and by the women taken and caried awaye, right evil brent, and many were taken agayne; but, fynally, by that I can esteme by the nombre of theym that I sawe goo on fote the next daye, I think there is lost above

viijc. horses, and all with foly, for lak of not lying within the campe. I dare not write the wonders that my Lord Dacre and all his company doo saye they sawe that nyght vj. tymys of sprits and ferefull sights. And unyversally all their company saye playnely, the devill was that nyght amongs theym vj. tymys; whiche mysfortune hath blemysshed the best journey that was made in Scotland many yeres. I assure your Grace I found the Scotts at this tyme the boldest men and the hottest that ever I sawe any nation; and all the journey, upon all parts of the army, kept us with so contynuall skyrmyshe that I never sawe the like. If they might assemble forty thousand as good men as I nowe sawe fifteen hundred or two thousande, it wold bee a herd encounter to mete theym. Pitie it is of my Lord Dacre's losse of the horses of his company. He brought with hym above four thousand men, and lodged one nyght in Scotland in his most mortall enemy's contre. There is noo herdyer ner bettir knyght, but often tym he doth not use the most sure ordre; which he hath nowe payed derely for.

Written at Berwike, the xxvij. of September.

Yours most bownden,

T. SURREY.

TO MY LORD LEGAT'S GOODE GRACE.

ANNALS.

Annotations bracketed thus [].

[The Town Books date from 1638. Except when otherwise stated, the Annals, &c., are from Town Books and Papers.]

THE TOWN CHARTER OF 1537.

TO ALL WHO SHALL SEE OR HEAR THIS CHARTER, JAMES DOUGLAS OF DRUMLANRIG AND BARON OF THE BARONY OF HAWICK, LYING WITHIN THE SHERIFFDOM (*lit vice-county*) OF ROXBURGH, EVERLASTING HEALTH IN THE LORD. Since it is manifest to me, and is well known by my old evidents, that my town of Hawick, lying in my foresaid Barony of Hawick, within the above written Sheriffdom of Roxburgh, STOOD FROM OF OLD CREATED A FREE BURGH OF BARONY, and since the Charters and evidents of the tenants and inhabitants of this (*hujusmodi*) town and burgh have been lost and destroyed in times past of hostility and war through invasions of Englishmen and thieves, from which I desire no

prejudice to arise against the tenants themselves, but I desire rather to help them. BE IT KNOWN, therefore, that I have given, granted, and by this, my present Charter, confirmed, and do give, grant, and by this, my present Charter, confirm to the persons underwritten of my said town and burgh of barony, tenants, all and sundry, my lands following, namely, to Robert Scot of Howpaslot, six particates of land ; to Robert Scot of Allanhauch, three particates ; to David Rutlech, eight particates ; to Thomas Brown, three particates ; to the Chaplain of the Altar of the Blessed Virgin Mary within the Parish Church of Hawick, two particates ; to Sir James Young,* one particate ; to Walter Turnbull, one particate ; to Robert Chalmer, one particate ; to Simon Chepman, one particate ; to John Scot, two particates ; to Robert Short, two particates ; to William Scott, half a particate ; to Richard Fair, half a particate ; to William Scot, son of William Scott, eleven particates ; to John Waugh, two particates ; to John Howburn, one particate ; to William Douglas, three particates ; to Stephen Scott, John Schort, and Jonas or Janet (*Jonete*), Lidderdale, one particate equally among them ; to Jonas

* This brave priest was killed in a storming of Hawick by the English in 1548. He and ten others refused to yield their tower and were burned to death.

Lidderdale, two particates; to Hawis Lidderdale, one particate; to Sir Thomas Fawlaw, two particates; to Thomas Lidderdale, two particates; to Jonas Gledstains, one particate and a half; to Nicholas Lidderdale, a half particate; to John Cesfurd, one particate; to Andrew Young, two particates; to John Scot, two and a half particates; to Thomas Scott, three particates; to Thomas Burn, one and a half particates; to Sir John Scot, four particates; to Thomas Connell, one particate; to Master John Hepburn, two particates; to John Plendergaist, a half particate; to James Blair, a half particate; to William Paslay, a quarter of a particate; to George Young, a quarter of a particate; to James Cesfurd, a quarter of a particate; to Ad. Cesfurd, a half particate; to John Young, a quarter of a particate; to William Cesfurd, the quarter of a particate; and to Matthew Hendersown, two particates, with pertinents, lying on the south side of the public street of my town and burgh of Hawick foresaid; as also to the said James Blair, one particate; to the Chaplain foresaid of the Altar above written, one particate; to Besses (or Bessie) Wylie, one particate; to William Alisoun, one particate; to Ad. Benkis, one particate; to William Storie, one particate; to Jonas Cesfurd, two particates; to the said William Scot, three particates; to John

Morley (*Morlo*), three particates; to Alexander Paalay, one particate; to John Angus, half a particate; to Stephen Scot, half a particate; to John Rowcastill, one particate; to John Cesfurd, two particates; to John Wauch, one particate; to Leonard White, one particate; to Simon Mertin, two particates; to Ad. Pattersoun, two particates and a half; to Margaret Lidderdale, one particate and a half; to Philip Lidderdale, two particates; to William Morton, one particate; to James Storie, one particate; to William Stawart, one particate; to John Farnelaw, two particates; to Andrew Lidderdale, five particates; to Jonas Lidderdale, one particate; to Archibald Scot, two particates; to John Deins,* two particates; to John Cesfurd, one particate; to James Wilson, one particate; and to William Fawlaw, one particate; with the pertinents, lying on the north side of the public street of my town and burgh of Hawick foresaid, between the lands of the Bourtrees, as they are commonly called, on the east, and the Common Vennel at Myreslawgreen on the west sides, from one and the other according to the limits and bounds as they are set forth at greater length

* This was probably the John Deans who was slain (see Tombstone and inscription), in 1546, "in debait of his neighbours' gear."

in their evidents and sasines thereupon previously given and granted ; and with the Common in the Common Haugh and Common Muir of Hawick (*le commoun hauch et commoun mure de Hawick*) lying between Burnford on the east, Troutlawford on the west, and the syke (*le syk*) of Wintownmoss on the south, and the dykes (*fossas*) of Goldelands and Fynnrik on the north sides from the one and the other. Excepting to me, my heirs and assignees, the lands lying in my town foresaid on the south side of the public street of the same, between the lands of John Scot on the east and the lands of Robert Schort on the west sides from the one and the other: TO BE HELD AND POSSESSED, all and sundry, my foresaid lands, excepting what has just been excepted, by the persons above written, their heirs and assignees respectively, as is set forth, with the pertinents, of me and my heirs, in fee and heritage and in free burgage in barony as formerly for ever, divided according to all their just old landmarks as they lie in length and breadth in dwellings and buildings, with building material and timber (*in domibus aedificiis ortis tignis lignis*), with common pasture, free entry and exit, and with all and every one of the other liberties, advantages, profits, easements, and their just pertinents, whatsoever, unnamed as well as

named, under the earth as well as over it, far and near, belonging to the foresaid lands, with pertinents that belong, or may justly be held to belong (*cum pertinen, spectan, seu juste spectare valen*—a doubtful passage, translated by Gladstains, the old Town Clerk, as though “spectare” should be translated “to examine” or “challenge,” certainly one of its meanings), in every fashion for ever, freely, quietly, in completeness, honour, comfort, and peace, without hindrance, revocation, contradiction, or obstacle whatever. RENDERING, for the same, yearly, the said James Blair, his heirs and assignees, to me, my heirs and assignees, one penny of the customary coin of the realm of Scotland, upon the ground of his half particate foresaid, at the Feast of Pentecost, in name of blench farm if it is asked for, and also finding and maintaining one lamp or *scala* of oil burning in front of the High Altar of the Parish Church of Hawick at the time of High Mass and Vespers on all feast (or holy) days of the year, in honour of our Saviour, Lord Jesus Christ, for the souls of the barons of Hawick, founders of the said lamp, and their successors. Likewise the foresaid Thomas Connell, Master John Hepburn, John Plendergeist, William Paslay, George Young, James Cesfurd, Adam Cesfurd, John Young, and William Cesfurd, and their heirs and assignees, in

usual custom to the said James Blair, his heirs and assignees, the annual payments (*redditus*) for the same to the said James, his heirs and assignees, heretofore due and customary, according to the tenor of the evidents to the same granted thereupon by the said James heretofore. As also the rest of the persons written above, their heirs, successors, and assignees, in usual custom to me, my heirs and assignees, for every particate of the said lands granted by me to them respectively, five pence of foresaid money at two customary terms in the year, namely, the Feast of Pentecost and Saint Martin in winter, by equal portions on the ground of the said lands in name of annual duty and multure of their grain (*multurus de granis suis*—this is not expressed in this way in the Confirmation Charter, which should have been a literal copy, but is rendered *sui firmi burgalis* in one place and *seu firme burgaris* in another, “or burgage-farm”); and also making to me, my heirs and assignees, the services such as other inhabitants and tenants of free burghs in barony within the realm of Scotland make to their lords and superiors, with power to the said persons, their heirs and assignees, Burgesses of the said Burgh, present and to come, to create and ordain annually bailies and the officers necessary in the same for the government of such a

burgh as this. Provided, however, that it be not permitted to the said persons or their heirs or assignees to ordain, create, or institute bailies or any officers in the said burgh save those only who have or shall have their residence within the same (*in eodem moram trahunt et trahent*). Wherefore on behalf of myself, my heirs and assignees, I give and grant by these presents to the present bailies of the said burgh, and to those in time coming, my full and complete power and mandate, special and general, to take resignations of the lands above written: and to give and grant sasines of the same, as may have been agreed upon between parties: and also all resignations of the above written lands, or of any part of the same, made in the hands of the bailies of said burgh, and sasines of the same given and granted thereupon by them to others in any time past, I approve and ratify; and on behalf of myself, my heirs and assignees, by these presents confirm for ever. And I, the said James Douglas, and my heirs and assignees, shall warrant, acquit, and defend, all and sundry, my lands above written (excepting what has been excepted above) to the persons above written respectively, their heirs and assignees, in all things, and by every form as well, and to the effect set forth, against all men for ever. In witness whereof, my seal together

with my subscription manual has been appended to these presents at Edinburgh on the 11th day of the month of October, in the year of our Lord 1537, in presence of these witnesses:—Archibald Douglas of Kowschogill, William Scot, John Douglas, Master John Chepman, Sir John Scot, Vicar of Hawick, John Maitland of Auchingaschill, John Maitland, and Patrick Maitland, with diverse others.

(Signed) JAMES DOUGLAS
of Drumlanrik, wyt. my hand.



FACSIMILE OF DRUMLANRIG'S SEAL ATTACHED TO TOWN CHARTER.

[Sir James Douglas, the granter of the foregoing Charter, was the seventh baron of Drumlanrig, and a descendant of Earl Douglas, slain at Otterburn. He succeeded his father, Sir William Douglas of Drumlanrig, slain at Flodden in 1513. He was engaged with Sir Walter Scott of Braxholm in his attempt to rescue James V. out of the power of the Earl of Angus in 1528. He was knighted by the Regent of Scotland, and in 1553 appointed guardian of the Western Marches. He took part in 1567 against Queen Mary when she was taken at Carberry. When Queen Mary revoked her resignation of the Crown she speaks very bitterly of Sir James Douglas and his son, with many others who took part against her, "the hell boundis, bludy tyrantis, without saullis or feir of God, zung Cesfurd, Andro Ker of Faldonsyde, Drumlangrig, zunger and elder, the fibill tyrant Mynto, the schameles boutchour, George Douglas." (Lennox Papers by Mr Fraser, vol. ii., 437.) Old Drumlanrig, as he was called, was taken prisoner in 1571. His son had a narrow escape from being captured also, and old Drumlanrig, not being certain he had escaped or not, sent to him the following singular epistle :—"Willie, thow sall wit that I am haill and feare. Send me word, thairfoir, how thow art, whether deid or livand? Gif thow be deid, I doubt not but freindis will let me know the treuth; and gif thow be weill, I desyre' na mair." This, his only son, was Sir William Douglas of Hawick, who died before his father in 1572. Old Drumlanrig died in 1578, and was succeeded by his grandson, Sir James Douglas.—From "*Drumlanrig and the Douglasses*" (*Ramage*), 1876.

The Charter was confirmed, as the law required, by one of Queen Mary, of date, 12th May, 1545. This Charter of the Queen recites the Charter of Drumlanrig already given with the slight change we have noted. We therefore give the confirming clause only. The Queen was only two-and-a-half years of age at this time, having been born at Linlithgow in December, 1542. She therefore grants the Charter "with the advice, authority, and consent of our most dear cousin and tutor, James, Earl of Arran, Lord Hamilton, Protector and Governor of our Kingdom, and of the Lords of our Privy Council.]

CONFIRMING CLAUSE OF QUEEN MARY'S
CHARTER, 1545.

" Which Charter, and the grant contained in the same, in all its clauses and articles, its conditions, modes, and circumstances, and in all things whatsoever, and by all forms, equally and to the same effect as has been set forth, we, with the advice and consent of our most dear cousin and tutor foresaid do approve, ratify, and for ourselves and our successors confirm for ever. Reserving to us and to our successors the rights and services of the said lands of the town and burgh in barony foresaid, with their pertinents due and customary before our present confirmation. Wherefore, we, with the advice foresaid, in consideration of the good, faithful, and gratuitous service rendered us by the said persons, indwellers, and inhabitants of the said town and burgh of Hawick, and for diverse other good causes and considerations moving us, will and grant, and on behalf of ourselves and our successors decern and ordain for ever that this our present confirmation shall be to them, their heirs, and assignees of as great validity, force, and strength, and as effective as if the same had been given, granted, and made by us, and our

predecessors, to the said persons, their heirs and assignees in larger form (*in majori forma*) before the taking of sasines by themselves respectively, for the foresaid particates and lands with pertinents, notwithstanding the sasines for the same taken otherwise by them before our present confirmation."

[The terms of the Town Charter raise an interesting question possibly as to the class of burgh to which the town of Hawick belongs; but into that question we have not leisure here to enter. The Charter is of supreme interest, for on it the burgh as known to us rests. It has been curiously misunderstood. It has been the general opinion that Hawick obtained its Common for the first time under this Charter of 1537, and that it was so granted because of services rendered at Flodden. We make no doubt that the town gave services enough at Flodden and elsewhere, but a study of the Charter shows quite clearly that the Common existed, possibly a larger Common, long anterior to the Charter. The argument for the other view is given by Mr James Wilson in the "Annals," p. 316. We need not quote it, but we may observe that it is quite insufficient to justify the conclusion, that indeed it is unsound. It has been adopted by later writers. As basis for our own opinion we give the following facts which we think are conclusive:—

- (a) The general presumption is in favour of our contention. The Commons existed before the barons. Professor Rankine, the best living authority on the law relating to land, remarks in "Land Ownership" (p. 523). "It thus appears that the view of the origin of commonry which prevailed before the results of modern historical research were published is exactly the reverse of the truth." "All history shows that the tendency is the very opposite—for the powerful to encroach on the ancient rights of the weak."

- (b) The Charter does not say that the Common is granted for the first time or for the reasons alleged, which it would almost certainly have done had such been the case.
- (c) The terms used in reference to all the grants made in the Charter, of the Common as well as of the particates, are "give, grant, and by this my present Charter confirm." Mr Wilson has drawn a mistaken distinction between the two.
- (d) The boundaries of the Common are not given for the *first* time, because they are totally insufficient. Two of them, viz., Troutlawford and Burnford are mere points and not bounding lines. The boundaries of the Common Haugh are not given at all.
- (e) The notion that Hawick possessed a right of pasturage and not one of property in the Common prior to 1537 is a gratuitous assumption, supported by no evidence and against the presumption of history.
- (f) So old and well-known are the Common and its boundaries to the people in 1537, that the scribe when he comes to describe them in the Charter simply transfers the vernacular into a sort of dog-Latin, "*le common hauch et common mure de Hawick.*"

Nay, more, we believe that places with names such as Hawick Shiels (lying now, and in 1537, beyond the Common) may reasonably be held to infer a much larger Common at some period prior to 1537. And (which more than any other argument perhaps disposes of the Flodden theory) we know that in 1511, James IV. made a re-grant of the Barony of Hawick* to Sir William Douglas of Drumlanrig, our "donor's" father, and in it there occur the words, "with all the clauses necessary to the creation of a burgh in barony" (Wilson's "Memories," p. 102). It was, then, the plain intention of our "donor's" father to have

* It is stipulated in this Charter that seisins are to be taken for the barony lands at the Moit (or Moat) of Hawick.

THE
JOHN DEANS TOMBSTONE,
St. Mary's Churchyard.





DEIUS OVIVAS
M.D.XL.VI

HEIR. LYSIAN. HONEST. MAN. IOHNE.
OF HIS NICHTE BOVRIS GCI. R. THE 3. EIR. OF GOD.

TO NEN. KNDLIG. OF HAV. KNDL. N. WARD. SEAT.

N. DE. R. A. T. I.

granted a Charter to Hawick and the son fulfilled it twenty-six years later. Had there never been any Flodden we should have had the same Charter, but we should have had it a little earlier. But assuredly a town of the antiquity of Hawick had its Common long before a Douglas had ever reared his tower in its midst. "It may safely be stated," says Professor Rankine (p. 524), "that in most, if not in all, of the conveyances of common to be found in ancient Charters, or spelt out of them by immemorial possession, there is to be found not a new grant but the recognition of a state of possession already subsisting beyond the memory of man, and too firmly rooted to be easily dislodged." This is common sense and justice.]

1546.

HEIR LYIS ANE HONEST * MAN, JOHNE DEINIS, QVHA
VAS TENENT KYNDLIE OF HAVIK MILN AND SLAN IN
DEBAIT† OF HIS NICHTBOVRIS‡ GEIR,§ THE ZEIR OF GOD,
MDXLVI. (*Inscription on tombstone in St. Mary's
Churchyard.*)

[The tradition concerning John Deans is that he was slain near Skelfhill in rescuing his neighbours' cattle from raiders. This very old inscription is still in excellent preservation. The richness of the lettering and the imposing appearance of the stone—for these times—indicate a high appreciation of the dead man's heroism. In all probability he would be the John Deans who got a grant of two particates from Drumlanrig in 1537. See the Town Charter.]

* Honourable, becoming.—*Jamieson's Dictionary.*

† Defence, protection.—*Ibid.*

‡ Neighbours.—*Ibid.*

§ Goods, effects.—*Ibid.* Also applied to cattle and farm plenishing—"The Captain of Bewcastle has driven my gear."—"Ballad of Jamie Telfer."

1640.

Extract from Common Act by the Baillies and Councill of Hawick, dated 4 Jany., 1640 :—"Item, quhatsumever persoune that beis not present yeirlie at the Commoune ryding and setting the ffairis sall pay fourtie schillingis, *toties quoties*, and wardit without licence or any lauchfull excuse."

1645.

May 26.—The said day, Allane Deanes, travellour, being accusit for not being at the ryding and merching of the Commoune upoun the 24 of May, 1645, compeirand confest he was at the Watch-Know, thairfoir assoilzeit him of the penaltie and fyne, and actit him self gif ewer he do the lyik he sall pay the dowble of the penaltie, conforme to the act, and dowble punishment.

[Wilson's "Annals," p. 62, mentions a precisely similar incident in 1644.]

1653.

Charter of the lands of Weensland and sasine thereon, *anno* 1653, granted by James, Earl of Queensberry, to William Scott of Horsleyhill, in life rent, and Robert, his son (great grandfather of Captain Francis James Scott), in fee granting the four merk land of Weens-

land, the three merk land of Shaws, and the one merk land of Burnflat, together with the liberty and privilege of pasturage and casting and winning of feual, feal, and others necessary upon the Common of Hawick.

[The question naturally occurs, what right had James, Earl of Queensberry, to grant a privilege of pasturage, &c., on the Common, seeing his ancestor had in 1537 conveyed the Common itself to the town?

The Scotts of Horsleyhill, like the Gladstains, were for centuries prominent men in the town. They were proprietors of Weensland, and their names frequently appear as Burgesses. William Scott of Horsleyhill sold the Tolbooth to the town in 1657. Satchells dedicates one of his postrals to Robert Scott, and traces his pedigree to "William of Midgap" (who was with Buccleuch at the rescue of Kinmont Willie in 1596), and for generations back to the Scotts of Howpasley; "their original was from Buccleugh." Their town residence was at the head of Walter's Wynd, formerly called Horsleyhill's Wynd. An interesting memento of the family still exists in the "old pend," or bastel house, at 51 High Street, the property of Mr John Turnbull, wine merchant. They sold Weensland about 1772.]

Charter of the lands of Flex extending to five merks, old extent, and sasine thereon granted by the said James, Earl of Queensberry, to John Gladstaines.

[The above two entries are taken from observes dated 1776 for Captain Francis James Scott and others in connection with their claims to share in division of Hawick Common.]

1666.

October 1.—George Irvin, Serviter to John Hardie, Maltman, made faith, that his Master directit him to go

to the thorter dikes to cast divots, and he went to the Myslawgreen, and did cast there contrar the proclamation made against casting there, and unlaues him in ten poundes Scots money, and John Hardie actit him as cautioner to pay the unlaw, and he actit him for his Master's relief.

1668.

July 2.—The Counsellors underwritten compeiring within the Tolbuith of the burghe of Hawicke, viz., James Layng, baillie, Walter Purdome, baillie, Mr Patrick Cunninghame, James Gledstanes, Robert Deanes, James Scott, James Scott, James Thorbrand, James Liddell, James Hardie, Williame Bridges and Robert Scott, and Walter Scott, Westporte, and Williame Scott, *apo*; did unanimouslie condescend and agrie to defend and owen be the law quhat was done in casting doune the dykes builded be Whitlaw and other adjacent nighboures upone the Common dyke of the Common of the said brughe without thair consents.

(Signed by the above.)

1673.

The Bailies and others in Hawick are indicted before the Lords of the Privy Council, at the instance of the Lord Advocate, the Earl of Queensberry, and others, for

riot, &c., at St. Jude's Fair. The libel narrates that the Earl's bailie, officers, and tacksmen, when about to ride and set the fair, and expecting the concurrence of the bailies and the other accused parties, were attacked by them "and their complices, all bodden in fear of weir,* armed with sowrds and other weapons, invasiEFF to the number of 200 people, who did impede them from setting the fair, and particularly did assault and invade the said John Leathen with drawn sowrds," &c., &c. In their answers the Bailies, besides generally denying all the charges, allege, *inter alia*, "the Earl of Queensberry, pursuer of this complaint, having reduction and improbation against the town and hail inhabitants, who have any real interest, which is now dependit before the Session thir several years, and which they were necessitate to defend, upon account whereof *some difference betwixt the Earl and the town anent the Commontie, whereunto the town has undoubted right and possession*, this groundless libel is raised and pursued against the town and Commontie, who never failed in their duty, but are, as they have always been, ready to do all duties as becomes faithful vassals, and yet, notwithstanding, upon the account of

* All arrayed in warlike manner.

the foresaid particulars of the Earl having taken up a prejudice against them, he, or at least his bailies do, by all means, endeavour to oppress, harass, and impoverish them."—*Extracted and abridged from Wilson's "Memories of Hawick," 1858.*

[Mr Wilson prints at p. 120 of his "Memories" the Draft of a Commission by the Town Council in favour of part of their number to proceed to Edinburgh for the purpose of concerting an equal division of the Common between Lord Queensberry and the Burgh, and thinks the probable date would be 1672. In view of the assertion in 1673 of their undoubted right and possession of the Common this proposal was not likely to come from the town and would probably emanate from Lord Queensberry's agents. Nothing came of it. There is no record in the town book of that period of any such proposal, and the Common was not divided till about a century afterwards. We may, therefore, conclude that at this period Lord Queensberry's claim to any part of the Common was successfully resisted.]

1675.

Charter under the great seal by King Charles the Second giving, granting, and confirming to James and Anne, Duke and Duchess of Buccleuch and Monmouth, and the survivor of them and the heirs male procreated or to be procreated betwixt them, &c., &c., of all and whole the lands and barony of Hawick comprehending the lands and others underwritten, viz. :—The Tower fortalice and manor place of Hawick, the East Maynes extending to 19½ husband lands, the West Maynes

extending to 8 husband lands, with houses, buildings, &c., the mills of Hawick with the mill lands, multures, &c., the town and burgh of barony of Hawick and customs thereof, with markets and other liberties, privileges, and immunities thereto belonging, . . . *with all right title, interest, and claim of right which William, Earl of Queinsberrie, has to the Commonty of Hawick and Common Muir of the same* . . . which lands and barony of Hawick comprehending as is aforesaid formerly pertained heritably to the said William, Earl of Queinsberrie, held by him immediately of us, and were by him and his lawful procurators in his name, duly and lawfully resigned in the hands of the Lords of our Treasury and Exchequer, at Edinburgh, in favour of and for new infeftment thereof to be given by us to the forsaid James and Anne, Duke and Duchess of Buccleuch and Monmouth, and their foresaids. . . . To be held of the King and his royal successors in fee and heritage, and in free barony, for payment yearly at the feast of the Purification of the Virgin Mary, of an arrow at the principal messuage or manor place of Hawick in name of blench farm if asked only. . . . Dated at Edinburgh, 26th February, 1675.—*Registrum Magni Sigilli, Lib. 65, No. 125.*

[Thus passed the Douglasses, who, for above two centuries, at least,

had been lords of the Barony of Hawick. The title itself, Baron of Hawick, still pertains to the family, the sole reminiscence of their connection with the town. It is matter of regret that the closing years of their sway over the town were marked by a distinct alienation of the affections of the townspeople, who, then as always, resented any interference with the Common—their immemorial possession.]

April 19.—The quhilke day the baylyeas and Counsell of this towne and brugh being conveyned, and in ansueir unto the letter written to them by Walter Scott of Goldilands, quhair in he desyred liberty to bigg upon the topp of that pairt of the Common dyke quhich marcheth with his ground for the preserving of his cornes from being eaten and destroyed and obleist him not to wrong the meiths and marches of the samen. After matur and serious deliberatione of the samen, and thair finding his desyre to be reasonable, they grant the forsaid desyre and nomat and appoints Baylyea Burne, Baylyea Gladstaines, and Walter Scott, glover, with Baylyea Purdome to goe up upon Saturday first about eleven o'clock and sight that the marches of the said dyke be not prejudged.

May 29.—Robert Scott of Horsliehill, and Francis Gledstones of Whitlaw, among others, admitted Burgeses of Hawick.

1677.

March 26.—The quhilk day, John Scott, Southfield,

was onlawed and amerciatt conforme to the acts and practique for abusseing of the marches of Hawicke marching betuixt John Hardie and him and for his disobedience.

1679.

October 24.—The said day, Robert Wright was found guiltie of ane provocatione by the violent throwing over of ane load of peitts belonging to Robert Thomsone in Hawick Sheills, and in ane ryott for strykeing of him, and the said Robert Thomsone in ane ryott committ upon the said Robert Wright, and onlawed, conforme to the acts of the towne, in regaird of thair own confessions, and the said Robert Thomsone's declaratione upon oath.

1681.

THE OATH OF EACH BURGESS, GIVEN THE
TIME OF HIS ADMISSION (*from front of Town
Book, commencing 1681*):—

I PROMISE AND SWEAR, I shall be a true and faithfull Burgess of the Burgh of Hawick. That I shall defend the liberties thereof in all time coming with my body, goods, and gear; be obedient to the Magistrats and their successors in office; that I shall give the Baillies and Councill of the Burgh the best advice I can when

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they ask it of me. I shall conceall that which they impart to me. I shall colour* no man's goods under colour of mine own, as I shall answer to God.

SO HELP ME, GOD.

1687.

August 12.—The quhilke day, Thomas Scott, laird, William Suan, younger, Robert Douglass, John Allane, James and Steven Greinsheills, and George Scott, smith, was each of them onlawed in tenn pound Scottis for thair clandestin takeing away of thair sheipe, quhich was putt befor the toune herd, and did not pay him for the keiping of the same.

1692.

May 21.—Wee, William Scott and James Deanes, the tuo present baylyeas of the town and Brugh of Havicke and present Town Counsell thereof, with the speciall advyce, consent, and assent of the late Baylyeas and Magistrats of the said towne and Brugh and of the old Counsell and other inhabitants of the said towne and others concerned therein and undersubscryvand, takeing into our most serious consideratione a proposall made to us be Francis Gladstaines of Flex, alias of

* To represent falsely.—*Jamieson's Dictionary.*

Whitlaw, to the effect and in manner aftermentioned, &c. That is to say, that wher the said Francis Gledstaines being to make ane enclosure for planting in ane pairt of his ground of the saids lands of Flex heretablie pertaining to him lyand contiguous with and to our Common of Havicke, and ther being a little brae upon our syd of the march betwixt him and us (in that place quhair he is to draw his inclosure), that wold be very convenient for training up of timber, which he, the said Francis, offers to take within his inclosure and to plant it all with trees, provydeng when the said trees comes to any good grouth and ar fitt for use that wee allow him the one halfe of the said trees for his expenss and trouble in encloseing, trayning, and nourishing up of the said tymber, the other halfe thair of being to be disposed off be our selvis and our successors, as we or they shall think fitt, for the good of our Incorporatione. And wee, being sensible and more then fully persuaded of the advantage and benefitt that may accreasse to the haill towne by this proposall, especially considering that he and the possessors of the lands of Flex hath hitherto reaped the greatest pairt of the profit of the said peice of ground could afford, doe, therfor, for our selves, and in name and behalfe of the rest of the inhabitants of our towne and brugh, accept thair of and

allowes warrands and permitts him to carry his dyke to the toppe of the said brae of the said Common, to which John Scott of Wooll and Gideon Scott of Falnesh, as Chamberlaines to the Dutchess of Buccleuch, her grace, compeired and gave thair consent. He, on the other hand, binding and obleidgeing himselfe, his aires, executors, or assigneyes to plant it in manner forsaide and giveing securitie thairfor, that the equall halfe of the said trees shall be made furthcomand to us and our successors when ever wee have use for them, reserving allwayes to us and our successors the liberty and priviledge of markeng downe our meiths and marches of our Common yearly, according to the accustomed manner. And for the said Francis Gladstaines, his securitie in the premisses, wee all unanimously, with ane free full consent and assent for our, and as takeing the burden in and upon us for the said towne of Havicke, appoynts and ordaines thir presents to be insert and recorded in this, our towne Court Bookes, by way of act, and ane extract thairof to be given of the samen in all the heads, poynts, clauses, and conditions of the samen by the Towne Clerke, which wee, undersubscryveand, susteine and be thir presents susteins as als awthenticke, as if ther wer ane particular paper granted by us and ilke ane of us to

the effect above mentionat. And in testimonie of our adherence thairto, and to the haille premisses above written, wee, both the said Francis Gladstaines of Whitlaw, the tuo forsaide Baylyeas of the said Brugh of Havigke and present Towne Counsell therof, late Baylyeas and Magistrats of the said towne and of the old Counsell and other inhabitants therein and others concerned in the same, have subscriyved thir presents with our hands. Att Havigke, the twenty seventh day of May, jm. vjc., nyntie and tuo years.

ROBERT SCOTT

of Horslihille.

WILL. SCOTT.

FRAS. GLEDSTAINES.

WILLIAM SCOTT, balyea.

JAMES DEANES, baillyea.

Etc. (*other 33 signatures*).

December 16.—The quhilke day, John Gledstaines of Hillisland, and John Scott, smith, wer admittit and creat Burgesses and gave thair Burgess Oaths.

December 16.—The quhilke day, James Deanes and Patricke Richardsone, the tuo present Baylyeas of the towne and Brugh of Havigke, haveing conveyied the new and old Counsellors and other inhabitants, Burgesses within the said towne, in order to see ane letter direct to them ffrom Francis Gladstaines of Whitlaw, unsealed and read over, relative, too ane

proposall made by him to the said towne by several of his missive letters and ane act made and granted by them in his favours. Anent the allowing and granting of him ane peice of the Common for the better building of his enclosur at Flex, as the said act tuo leaves of this booke, immediatly preceeding, subscriyved both by the said Francis Gladstaines on the ane pairt, and the saids Magistrats, new and old, Counsellors and other Burgesses of the said towne of the date the twenty seventh day of May in it selfe at mair lenth proports, did unseall and oppenly caused thair clerke read over the fforsaid letter, the tennor quhairoff followes, &c.

FLEX, December 15, 1692.

GENTLEMEN,

Having bein so much abroad since you were pleased to pass ane act in reference to the proposall I sent you annent the north dyke of my enclosur, I could not have tyme to prosecut the same according to the terms yow ar pleased to grant it. Bot the season now confyning us to our housses and giveing us more leasur to mind and attend thess domesticke affaires, I have taken the libertie to trouble you againe with this lyne, wherin I desyr that since yow found the proposall reasonable and tending so much to the town's

advantage, whereby yow or yours may reape ane certaine benefitt without derogateing anything from your right and interest in that peice of ground as ane part of your Common, you may be pleased to perfect what you have so well begun, in appoynteing some of your number to visitt the ground any day you think fitt and designe the place, wher yow allow the dyke to be sett, quhich shall be punctually observed by me.

GENTLEMEN,

I am fully persuaded that this is noe less profitable for you, then it is convenient for me, yett if ther be ane considerable part of your towne that dissenteth from it after sending my most hearty thanks to yow who subscriyved the act and receaved the proposall, with the same honestie, freedome, and ingenuity, that I made itt, to lett thess see with quhat ane unbyassed judgement yow have proceided in the matter and how unwilling I am to desyr or doe any thing that may give offence to my neighbours. I shall earnestly entreat, that the act may be raised out of your bookes, and that such of your towne who appeared most against it, be appointed to marke the place upon the Burnesyd where the dyke may be set up, according to the Act of Parliament, ffor I shall never seike my

pleasur and conveniencie in that which bringeth nothing bot stryffe and contentione with it. Bot quhich way soever you take I hope you will be pleased to give it the last touch so soon as possible you can, and whatever be your determinatione therin shall be readily and willingly complied with and acquiesced in by him who is your reall friend and willing to serve yow in everything within my power.

FRA. GLEDSTAINES.

December 16.—In regard to the said matter the baillies with consent foresaid appointed five or six of their number to visit the ground and to sett down the place where the said dyke should be built, and on the 17th Decr. they agree to the termes contained in the act thereanent.

The said day the forsaid Baylyeas and others also above mentionatt proposeing to Whitlaw, that since ther was so good ane correspondence and freindshipe betuixt the towne and him, he, as Burgess, in thair said towne should assist them to repair thair tolbuith, now ruinous, which he readyly and willingly agreed to, and for that effect consented to thair cutting and away takeing of two trees growing upon the march dyke, near Whitlaw, and another lesser one growing upon that part

of thair Common quhich is at the backe of the old ffalne housse in Whitlaw, and also freely offered to give them another off his own, better than any of the former three, and desyred that the same might be marked in thair books as ane testimonie of the mutuall kyndness betuixt the toun and him, and, also, that other neighbouring burgesses, by his example, might be induced to assist in timber or otherwayes for repairing the said Tolbuith.

[The fine old trees in the grounds of Flex would probably be planted by Mr Gledstaines at this time.]

1694.

June 15.—The said day, Marion Robisone, spous to George Scott, pedder,* was onlawed and ammerciatt conforme to acts of the towne and brugh for bakeing of Bakes† in the Common mosses contrair to the Acts and Statuts of the town and Brugh.

1698.

June 30.—The said day, Andrew Clarke, carrier, was onlawed, *ut supra*, in carreing the ground of the Common and muckeing the arable land with the same contrair to all former practique in the said town.

* A pedlar, a travelling merchant.—*Jamieson's Dictionary*.

† Bakes—Peat kneaded or baked with the hand.—*Ibid*.

November 19.—The said day ther was found justly dew to Agnes Elliott six pounds Scotts, and four pounds Scotts to Alexander Young, officer, for his last yeirs Common rydeing coat, and ordains the same to be payd out of the first ready money that can be had out of the burgess money or other towne casualities.

1703.

May 17.—The sd. day the Baylyeas and Counsell allowed and ordained Robert Aitkinson and David Wilson, carier, and George Deans, pedder, to pay into Baylyea Mertine sex pound per piece, *inde*, eighteen pound for payt. of the officers, pyper, and drumers coats att the Common rydeing in *anno* 1702.

The sd. day allows and ordaines the officers, pyper, and drumer to have coats att Common-Ryding this year, 1703, as formerly.

The sd. day the Common rydeing was ordained to be upon Fryday, the twenty eight of May, im. vijc. and thrie yeares, James Scott, called laird, was voted to cary the pencell.*

* Pencell—or pennoncelle—(spelt variously). A modification of the pennon in smaller form. The pennon itself was "the ensign of knightly rank, small in size, of elongated form, and either pointed or swallow-tailed at the extremity, is charged with the badge or other armorial ensign of the owner, and by him displayed upon his own lance as his personal ensign."—*Boutell's "English Heraldry," 1875.*

Habith the fiftenth day of May 1763 225

The 2d day the Burgesses & winning all owed & ordained Robert Aitherton
and David Wilson to be the Clergyman's wife to pay into the High Church
+ the poor & the poor in the church for part of the officers pyre and
Dinner to the Commoners in June 1762

W. Gladstanes Clerk

The 2d day allows & ordains the officers pyre & dinner to the
1 cuts at Commoners this year 1763 as formerly

W. Gladstanes Clerk

The 2d day the Commoners was ordained to be upon pay the
x in the style of May 1763 & the year 1764
the poor

FACSIMILE OF ENTRY IN COUNCIL RECORDS (see preceding page).

[This is the first mention in the Burgh Records of the flag and its bearer. The terms are such, however, to show conclusively that it was no innovation but simply the continuance of a very old custom—a view corroborated by the language of the entry of 1706—which describes it as an “ancient custome and practicke of the said towne for many generations and hundreths of years past.” The entry of 1705 describes the standard bearer specifically and for the first time as “Corronett,”* the name changing in 1706 to “Ensigne,” but later and always to the present day reverting to Cornet.]

1704.

May 28.—The said day, Walter Gledstanes, of Hillisland, was admitt and creat Burgess and gave his Burgess Oath.

July 8.—The petitione of the Laird of Gledstaines for libertie to cast divots in the Common of Havicke: Unto Patricke Richardsone and Walter Grahame the tuo present Baylyeas of the towne and Brugh of Havicke and towne Counsell therof,

SHEWETH,

Robert Gladstaines, of that Ilk, that quhairas his stable in Humillknoues is for the present to be thatched over with faill and divott, and that it must be necessarlie done befor the approcheing harvest comes on, &c.

* Cornett—The ensign of a company of cavalry; *French*—Cornette.—*Jamieson's Dictionary*.

May it therfor please yow to grant your petitioner freedome and libertie as to cast, win, and lead, make in and away take of your Commone Muire of Havicke als many divots as will thatch his said stable, especially, considering upon suchlyke occasions formerly, the said Laird of Gledstaines, his awthors and predecessors, upon thair desyr and petitions to your predecessors obtained allwayes when neid requyred the lyke libertie without interruptione; the granting of which desyrs and petitione to your neighbour, the said Laird of Gladstaines, will be holden and reput as ane peice of singular kyndness done to him and your favourable ansueir is both speedilie and confidently expected by, &c., *Sic Subscritur*, Ro. Gladstaines.

[Which petition was granted.]

[The Gladstains of that ilk were "the parent stem from which sprung the Arthursiel Gladstains, the progenitors of the Right Hon. W. E. Gladstone, who has made the name world-known and age-abiding."—*J. G. Winning's "Satchells," 1894.*

The Hawick men were with Little Gladstain, "good at need," at the Raid of the Reidswire in 1575. Gladstains were frequently admitted Burgesses, and seem always to have been on the best of terms with the town. For three generations we find Gladstains Town Clerks of Hawick.]

1705.

May 28.—The said day the Baylyeas and Counsell appoynted the Commone to ryd upon Fryday nixt, the

first day of June, and nominat James Scott, called of Westport, to be Corronett for that yeare.

1706.

May 24.—The said day the Baylyea and Counsell being conveyed, did also att the same tyme ordaine to the Commone to be ridden on Fryday, being the last day of May, j^m. vijc. and six years, and voted Thomas Hardie, merchand, to be ensigne and to carrie the colour.

Ditto.—In respect that the carieing of the careing (*sic*) of the pencell and colour at the Common rydeing quhich was to be upon the morrow thereafter being Fryday, the last day of May, 1706, was upon the Fryday befor, being the 24th day of the said moneth, conforme to ancient custome had elected and voted by pluralitie of votes of baylyeas and counsell Thomas Hardie, merchand, to carie the said Colour the forsaid day, and had formerly called and caused thair officers to give him tymous advertisment upon eight dayes preceeding premonition and advertisment for that effect, yett, notwithstanding, in high contempt of the said Baylyeas and town Counsell, their auctoritie, the said Thomas Hardie, being admitt, creatt, and solemne suorne Burgess, did wilfully desert and absent himself from

carreing the said colour the said day, which did without ony stoppe or let occasione ane great disturbance, confussione, and mutinie amongst the other civil inhabitants of the said towne, even to the comitting of some ryott, abusing of Magistracie and almost to the effusione of blood. On respect quhair of and of the hail premisses, the said Baylyeas and town Counsell did statut and ordaine that the said Robert Hardie, the eldest present Baylyea, should carie the said colour the forsaid day through and out of the towne, and Robert Browne, the other younger present Baylyea, to cary the same backe againe, in and through the said towne, they in the meantyme appoynting any other person whom they thought fitt to carry it alongst the Common Muir, and lykewayes enacted the young unmarried men should not carie the same in the futur unless petitioned and granted by the then present Baylyeas and Town Counsell, and further ordained the said Thomas Hardie, for his contempt and disobedience, as burgess forsaid, to be cited, summoned, fyned, and imprisoned, who accordingly was fyned in tenn groats from being absent from the Common rydeing and in twenty pounds in refuseing to carie the Colour.

June 1.—The quhilke day, Robert Hardie, ane of the tuo present Baylyeas of the Brught of Havicke, sittand

in Judgement in ane lawfull fenced Court, within the Tolbuith therof, annent the confusione, tumults, disorders, and ryotts, even neir to the effusione of blood and high contempt of Magistracie, and of Acts and Statuts made and enacted by the Baylyeas and town Counsell, as representing the haill communitie and incorporatione of the said towne, touthching and concerning the person or persons that was statut and ordained to carry the towne pencill or Colour the day befor being Fryday, the last of May, 1706, as the said Act in the other page on the backe heirof at more lenth beares, made and occasioned by YOUNE UNMARRIED MEN AND LADS OF THE SAID TOWNE, WHO DREW IN ANE FACTION BY THEMSELVES, AND CONTRAIR TO ALL ANCIENT CUSTOME AND PRACTICKE OF THE SAID TOWNE FOR MANY GENERATIONS AND HUNDRETHS OF YEARS PAST, made and patched up ane mocke Colour of thair owne, caried the same alongst the haill Common and through the haill towne, deryding, mockeing, scoffing, and laughing at the old pencill, and bearers, and carriers therof, menaceing, threatning, and with many intollerable, injurious, and opproprious words, speeches, and cariages, publickly abuseing the then present Baylyeas, Robert Hardie and Robert Browne, towne Counsell, and other the honest burgesses of the said

towne, the said Baylyeas and Counsellis, faithfull adherents, conforme to thair Burgess Oath formerly given for that effect, not only by deryding, mockeing, scoffing, and abusing the said Baylyeas the forsaid day at the rydeing and after the rydeing of the said Common marches, bot also upon the morrow thair-after, being the said first day of June and year forsaid, by cryeing themselve and hounding others to cry publickly and loudly to hallow out at windowes and too hout the baylyeas when passing by in the streets about thair owne necessar bussiness and negotiations. And all this acted and done by the persons under writtin themselves, or els by ther influence hounding and sending out of others for that effect, viz., James Scott, son to the deceast Walter Scott, called of Westport, merchand in Havicke; John Graham, son to Walter Graham, late baylyea and merchand, ther; Michell Briggs, son to Thomas Briggs, flecher, ther; George Rennicke, flecher, ther; James Scott, taylyor, ther; and Walter Leythen, shoemaker, ther; who, all of them, being lawfullie cited and sommoned, personally apprehended, to compeir before the said Robert Hardie, baylyea, the forsaid day, did all of them personallie appeare in judgement, and accordingly, either to their respective confessions or refuseing to depone in the matter lybelled for the

reasons and causes and many other reasons above written, wer decerned and fyned *ut infra*, to witt James Scott compearand, and it being referred to his oath whither or not he, by himselfe, or other wayes by his influence hounding and sending out of others his associats and accomplices annent the tumults, abuses, and other egregious disorders particularly above written, refused to depone, in respect quhairof, and that it was visible and most notourly knowne to the most part if not the haille inhabitants of the said towne and Brugh, that in the meane instant of tyme, when Baylyea Hardie was to mount upon horsebacke and carie the pencill according to statut and ordinance, he and the persons above named and others, thair associats, came publickly upon horsebacke in ane threatning manner, with ane buit to carrie the staff or standard in, and offer to gripe at and carie the said Colour. As also in regard that he did not only carrie the said mocke colour through the Common Muir and towne, and intended (if not dissuaded by peceable burgesses) with his factione and associats to preceid and goe before through the haille towne, the baylyeas, towne Counsell, and other honest inhabitant burgesses, contrair to all former ancient practice. He, the said James Scott, John Graham, Michell Briggs, George Rennie, James and

Walter Leythen (who all of them compeired and refusing as his associates and *socii criminis* to depon annen the premisses were decerned and ordained to remaine in prison till they found cautione for ther better and more peaceable behaviour in the futur, which statut and ordinance the above designed Michell Briggs, George Rennieke, James Scott, and Walter Leythen did fulfill, attemperit, and obey, by ther finding sufficient cawtionne to the effect above mentionat.

June 8 and 17.—The quhilkes dayes, respective *et* successive, the present Baylyeas, Robert Hardie and Robert Brown, haveing conveyned and called togidder the towne Counsell annent the letters of suspension and charge to sett att libertie, brought out, raised against them att the instance of the above designed John Grahame and James Scott, quhair in Francis Elliott and Walter Graham as cautioners for them, it was put to the vote of the Counsellors underwritten, whither or not they wold adhere to and backe the saids baylyeas in the prosecuteing, calling, and discussing of the saids letters of suspensione, and charge to sett att libertie, befor the Lords of Counsell and Cession, against the above named persons and thair cautioners above written, did give thair respective votes *ut infra*, viz. [They all adhere, save four, who desire to consider further.]

1707.

May 9.—The said day the baylyeas and town counsell did unanimouslie agree that ane new colour, standard, or pencell, should be bought and be in readiness at the nixt ensueing Common rydeing, in respect the old on was altogidder torne and useless, and to that effect to uplift and take of the readiest burgess money.

Ditto.—It was statut, enacted, and ordained that noe person nor persons, either burgesses, freemen, nor unfreemen, residents within the said burgh, young nor old, should presume or take upon hand, under quhatsoever colour or pretext, to transport or cary any other colour, pencell, or standard, either within the towne or thorough and about the meithes and marches of the Common Muir and pasturage therof, at the Common rydeing first, or at the Common rydeing in any tyme to come for the futur (except allowed by the baylyeas successive for the tyme, and towne Counsell of the said burgh), and that under the paine and penaltie of twenty pound Scotts, *toties quoties*, by and attour imprisonment dureing the baylyeas' will and pleasur, and the parents to be lyable for their children's fynne and onlaw.

May 30.—This day, Robert Roucastell and Robert

Browne, the tuo present baylyeas, with the towne Counsell, did ryde the meiths and marches of yr. Common, and George Deanes, merchand, was the first that caried the new pencell, standard or colour, which being bought by Baylyea Mertin, at Edenbrugh, coast and the money payd out of the burgess money by Baylyea Roucastell at the pryces aftermentionat, viz:—

	Lib.	sh.	d.
<i>Imprimis</i> , for three ells of Silke at fortie			
four shillings per ell extends to	...	06	12 00
Item, for eight ells of Ribbon att thrie			
shillings per ell,	01 04 00
Item, for other tuo ells of Ribbon at			
ffye shilling per ell,	00 10 00
Item, for six drope* of Silke,	00 12 00
Item, for makeing of it,	01 16 00
<i>Summa is</i> ,	10 14 00

[This new pensil, standard, or colour, is still preserved in the Museum. See illustration, p. 42, No. 1. It measures along the staff about 34 inches and, as will be seen from the coloured sketch, it is pennon shaped. The flag in use at the present day measures about 36 inches along the staff and is almost square.]

* From previous entries in the Town Book this appears to have been a measure of some kind.

Aitkine, son to William Aitkine, being for this yeare in the leitt for careing of the colour or pencell, John Robson was, by pluralitie of votes, elected and chosen Coronett.

1712.

May 13.—The said day the baylyeas and towne Counsell did appoynt and ordaine the meiths and marches of the Common muire, moss, and pasturage to be ridden upon Fryday come ane ffourthnight, being the threttie day of the said current moneth of May, 1712 years.

The said day they ordained the towne treasurer to furnish and provyd as cheape as he can als much cloath of ane colour as will be four coats for the tuo officers, pyper, and drummer.

The said day, James Pursell, wright; Thomas Trumble, merchand; George Rennieke, flecher; James Richardstone and James Aitkin, merchands, being leitted for carreing of the towne pencell and colour for that day, George Rennieke was ordained to carrie it by pluralitie of votes.

1713.

March 7.—At Burnflat in answer to an supplicatione given in by Walter Patersone* of Burnflat, to the Bailies

* This Walter Patersone was the father of Scott's "Old

and Town Council, humbly desyring that they would appoint the setting down of distinct meiths and marches betwixt the landes of Burneflatt, which is his propertie, and the Commontie of the said towne, which lyes adjacent to and contiguous with the said lands of Burneflatt. [Seventeen march stones set along the march.]

1715.

June 15.—John Tait, gardener, fynd for breaking the marches between the Common and the propertey of the Dutchess of B. at the Woiliegate.

1717.

June 7.—Ane report that Gilbert Elliot in Winding-tounridge, or one of his servants, had wranged the meiths and marches of ye Common at Windingtoun Moss-side, and upon the south side of the said moss. [Bailies went to the ground with one or two Burgesses best acquaint with marches.] Going over to Hawick Shiells they found that — Scott, tenant there, had ploghd. up ane march corner hott standing upon the nortt side of said Common, opposite to the toun of

Mortality." Last year the Hawick Archæological Society inserted a memorial tablet in the wall of "Old Mortality's" birthplace at Burnflat.

riding of the marches of the Common belonging to this town, both by old and young men, who were overtaken by excess in drunkenness thereat; therefore, the minister and members of the session this day thought expedient for suppressing the growth thereof in time coming, that two of their number should take narrow inspection of the families in this town who *give* ale or brandie, either at the outgoing or incoming of the horsemen and footmen, and give notice of them at the next meeting of the session.

May 30.—The minister showed to the session that he was very well pleased with the deportment and behaviour of those who were at the riding of the Common. And likewise having been at the trouble to go through the innkeepers in the town, that he found at their cups none.—*Wilson's "Memories."* *Kirk Session Records.*

1726.

April 8.—Allow the said Mungo Armstrong two summ of sheip extraordinary for this year, and one summ yearly thereafter, for keeping up the shiell* in the Muir.

* A shed erected for sheltering sheep on the hills during the night, containing also a lodge for the shepherd.—*Jamieson's Dictionary.*

1727.

February 4.—John Elliott, in Goldilands, admitted Burgess.

May 4.—The Treasurer to give new coatts and ribbons to the officers, drummer, and pyper.

1729.

September 27.—The said day William Riddell, late in Allanhaughmilne, admitted Burgess.

1733.

Intimation for Riding the Marches of the Commonty of Hawick, 25th May, 1733 :—

These are to give advertisement to all Burgesses within the Burgh and Town of Hawick, and Burgesses outwith the same, that the Baillies and Councill are to ride the marches of the Commonty of Hawick, upon Friday, the twenty-fifth of May instant, as hath ever been usual. Therefore warning all the said Burgesses to attend the Baillies and Councill that day in their best apparell to the end forsaied.

June 25.—The said day the Baillies and Councill prohibite and discharge any Burgesses of the Burgh to keep or pasture on the Commonty of Hawick any number of sheep, &c., exceeding twenty, unless they design to winter them or keep them untill Martinmas, under the penalty of fourty pounds Scots in all time coming.

September 27.—John Gledstains of Hilliesland, sworn and admitted heretable Burgess.

1734.

Instrument of Riding the Marches of the Commonty of Hawick, and Protest against Sir Gilbert Elliot of Stobbs, for the year 1734 :—

IN THE NAME OF GOD, AMEN. Be it known to all men by this present publick Instrument, that upon the thirty-first day of May, Seventeen hundred and thirty-four years, and of his Majesty's reign George the Second, by the grace of God, King of Great Brittain, France, and Ireland, defender of the faith, the seventh year, in presence of me, nottar publick, and witnesses subscribing, John Scott and Thomas Turnbull, present Bailies of the Burgh and Town of Hawick, with the remanent members of the Town Councill of the said Burgh, and haill community thereof, DID, according to antient custome for many years past, PASS upon horse and foot round the haill marches and meiths of the Common in the Common Haugh and Common Muir of Hawick, lying betwixt the Burnfoord upon the east, Troutlawfoord upon the west, the dykes of Goldielands and Fenwick upon the north, and the syke of Winding-Toun Moss upon the South, from the one and other parts, IN ORDER to visit and inspect the said meiths and marches, and to take care that no adjacent neighbours made any inroachments on the said Commonty, the undoubted right and priviledge of the Town of Hawick, AND OF NEW again, according to antient custome, as said is, without interruption, did throw up or lay on soads or new pieces of earth on their antient meiths and marches of the said Commonty, to the effect the same might allways remain indisputeably clear and plain, in all time coming, AND SICKLIKE, the said John Scott, one of the present Baillies of the said Burgh, for himself, and in name and behalf of the Councill and haill community of the said Burgh by their speciall command, PROTESTED against Sir Gilbert Elliot of Stobbs, and his haill tennents, adjacent neighbours to the said

Commonty (as hath been done these twelve years past and upwards), at two respective places in the said Commonty of Hawick opposite to the said Sir Gilbert's lands, one of these places commonly called Greenside Moss and the other the foot of Winding-Toun Moss. That the said Sir Gilbert Elliot nor his said tennents had no right, title, interest, clame of right, property, or possession to the said Commonty, nor priviledge of pastureing yrupon with horse, nolt, or other cattle, AND THEREUPON the said John Scott, Bailly foresaid, for himself and in name and behalf foresaid, asked and took Instruments, one or more, in the hands of me, nottar publick, subscribing. These things were done respectively and successively, *ut supras*, betwixt the hours of nine in the morning and four in the afternoon, day, month, year of God, and King's reign, above wryten, before and in presence of Ffrancis Ruecastle, saddler, in Hawick; Walter Scott, wright, there; James Dickson, merchant, there; and Thomas Kay, taylor, there; and diverse oyer witnesses specially called and required to the premisses.

Vero nihil verius,

JAMES WEIR, N.P.

[Then follows the customary docquet in Latin, that "Jacobus Weir, clericus Glasguensis diocesis," executes the Instrument as by law required, setting forth that the witnesses were personally present when these things were done, and so on.]

November 21.—Hony. Burgess, Robert Scott of Horselyhill.

1735.

May 8.—The said day the Baillies and Council have enacted that none who shall cast peats for this year in Whitchesters Moss shall take above twelve yards of measure alongst the Moss side for spreading of the said peats, and that conform to the said twelve elns there must be a bridge left.

May 26.—The which day the Baillies and Council have enacted and appointed that the one half of the Councillours shall ride with the eldest Bailly and the other half of the Councillors with the youngest Bailly of the Burgh yearly, from and after this date, round the marches of the Commonty of Hawick in all time coming, and the present Baillies for the time to take their horses at the Cross respectively, yearly, in all time coming.

October 4.—Walter Scott, Crumhaugh, a Councillour, and keeper of one of the keys of the Charter Box.

1737.

July 8.—William Nicol, son to John Nicol, in Allanhaughmilne, admitted heritable Burgess.

1743.

Advertisement of Common-Riding :—

These are to give advertisement to all Burgesses within the Burgh of Hawick that they have liberty and privilege to bakes bakes* in all the Mosses of the Commonty of Hawick for this present year, 1743, except in Windington Moss, and that they must not spread peets or sett any bings within the said mosses for the space of fifteen days after the date hereof or mark ground till Monday next at six of the clock in the morning, and whoever marks ground before that time any at six of clock who has a mind may take up ye ground, and that

* See Note to 1694.

they are to take no more ground to spread peets next the moss side than the breadth of eight elns, and to leave sufficient briggs, and that whoever marks ground and have no workers at it any that wants ground may take it up, and that none presume to cast peets before they be entered Burgesses, and that all Burgesses attend the Baillies to-morrow at the Call Know, and at ye Cross on foot or horseback, under the penalty of ten pounds Scots.

[THE AULD CA-KNOWE.—Mr David Watson, in his "Notes on Hawick Common-Riding," in the transactions of the Hawick Archaeological Society for June, 1867, refers to the Ca-Knowe as follows:—"To ensure the due attendance of the Burgesses a list of these citizens was read over by the Town Clerk at the Cross before proceeding to ride the marches, and again at the Muir, the spot from which it was proclaimed there originally acquiring the name of the Ca-Knowe. One or two places have been assigned as the exact locality where the roll was called, amongst others the rising ground of the 'Hero's Grave,' on which the stone coffin was found; *but from the old plan of Hawick Common, before its division between the burgh and neighbouring proprietors, this could not have been the spot, as it was never included within the limits of the Common, and the Knowe really entitled to this distinctive name was the highest point in the field between the present racecourse and the Teviot, looking down on Goldielands; this ground having been enclosed for a long time past, however, the roll was latterly read by the Town Clerk, and repeated by the Burgh Officer, from the shady retreat afforded by the 'Cornet's tent' until the discontinuance of the custom.*"

Mr Watson is misinformed with regard to the "Hero's Grave." On comparing the plan of the division of the Common made in 1777 with the Ordnance Survey Map it is seen that the "Hero's Grave" is well within the boundaries of the Common before its division. (*See plan at end.*) The "Hero's Grave" is marked "Auld Ca-Knowe" on the Ordnance Survey; and the Rev. J. A. Wallace in his Statistical Account of Hawick Parish (May, 1839) thus refers to it:—"It may also be added that a cairn, which had long stood on the 'Auld Ca-Knowe,' about two miles distant from the town, was

removed about thirty years ago. At the depth of six or eight feet from the surface of the ground, there were several large stones set on edge somewhat in the form of a rude coffin, and enclosing a human skull, with several bones of a more than ordinary size." There cannot be the slightest doubt that this spot, the "Hero's Grave," being originally well within the marches of the Common, is the place where the Burgess Roll was annually read by the Town Clerk at the Common-Riding up to the year 1777—the year of division. After that, the spot indicated by Mr Watson might be selected, the old place not being included in the portion of the Common allotted to the Burgh. Hence the reason for the original place acquiring the designation of the "*Auld Ca-Knowe*." The "Hero's Grave," by which name it is now best known, has therefore an abiding memory of Hawick, the Burgess Roll having been called there annually for centuries.]

1744.

May 5.—Francis Gledstains, Cornet on Friday, 25 May, and to go to the moss on Saturday yr. after.

Mungo Armstrong, Common herd.

[This appears to have been the redoubtable Mungo's last year of office.]

1746.

Charles Scot of Crumhaugh made honorary Burgess.

1747.

May 27.—The Baillies and Council unanimously consent and agree that the Grammar School Colour shall ride next the Town Standard, the English School Colour next, and the 'Prentice Colour last, with

certification if any contravene the foresaid order they shall be severely fined and punished.

[The Grammar School Colour is still preserved in the Museum. (See illustration, p. 42, No. 2.) Notwithstanding the resolution of 1749, the Grammar School Colour appears to have been carried till about 1777. It was last carried by Adam Armstrong, as dux of the Grammar School. This Adam Armstrong married "sweet Isabella Lindsay," sister of Dr. Lindsay, Jedburgh, the young lady whom the poet Burns fell in love with when at Jedburgh.—See *Burns' "Diary of Border Tour," 1787, and Wilson's "Memories," p. 199.*]

1749.

May 26.—The which day the Baillies and Councill have unanimously resolved that in time coming no Colour or Standard shall be carried on the Common-Riding days except the Town's Colour or Standard.

1753.

September 29.—Marching with Robert Boyd of Flex, march stones sett down about the Burnside.

1755.

They also resolve and enact that the Common shall be marched some days before the Common-Riding by persons here appointed, "And four spademen with flaughter spades* to go along with them," four young men to attend also.

* Flaughter spade—A long two-handed instrument for casting turfs.—*Jamieson's Dictionary.*

1756.

Walter Scott, tenant in Newbigging, admitted heritable Burgess.

1759.

May 16.—The said day they enact and appoint each Councillor to ride the said Marches yearly amongst with the Magistrates, with certification that if they fail or neglect to do so in time coming, without a lawful excuse, they are to forfeit their Councillorship.

1765.

June 19.—The which day the Baillies and Council being convened anent one application made to them by Robert Scott, Esq., Chamberlain to His Grace the Duke of Buccleugh, for obtaining liberty to cast, win, and carry off from Hawick Muir divots for covering part of the office houses at Branksholm, which, being considered by the Magistrates and Council, unanimously granted the said request.

August.—The Bailies and Town Council take the opinion of Mr James Montgomery, advocate, as to their rights to the Common. [Mr Montgomery was the arbiter who, in 1777, finally settled the various claims to the Common.] In their memorial for Mr Montgomery's opinion, they state:—"In

virtue of the Charter from Drumlanrig, the Burgesses and inhabitants of the town of Hawick have been in the immemorial and uninterrupted possession of the Common in the Common Haugh and Common Muir of Hawick, as particularly bounded and described in the Charter, whereof the Marches are well known, as they have been annually rode round past memory of man, by the Magistrates and Town Council, with a Cornet who carries a standard and colours, attended by the bulk of the inhabitants. At this riding of the Common the Town Officers go along with spades and make an addition to the march hillocks; all other sheep and cattle, than those belonging to the town, found pasturing upon the Common, are turned off, and protests taken against the conterminous heritors.

This Common consists of a large tract of land and might be let at upwards of £200 sterling of yearly rent, in its present uncultivated state, and, if improved, at a great deal more. All the Burgesses of the town have a right to send their sheep, cows, and horses to pasture upon it. But this is not turning it to the best account, because, as it is but meanly stocked up by the inhabitants of the town, the sheep and cattle of the neighbouring tenements are not restrained from pasturing upon it, and the surface of the ground is destroyed

by casting of divots, as a license for that purpose is seldom refused to any person who chuses to ask it. The memorialists apprehend that the inhabitants of the town may reap more benefit from the Common than they do at present." Mr Montgomery in a long opinion, dated 20th August, states that his view is that the Commonty belongs in common property to the original owners of the particates and their successors (*i.e.*, the successors of the original grantees under Drumlanrig's Charter of 1537), and that it may be divided amongst them by a process of division before the Court of Session. He thinks "neither the Duke of Buccleuch, as superior, nor the Burgesses who have neither houses nor lands, are entitled to any share in the division." He further states that he is of opinion that "the Town Council have no power to lett or dispose of the Commonty, and, therefore, if there is an intention to sett all or any part of the Commonty, and applying the rents for the improvement of the town, it is necessary to have the consent of the proprietors (*i.e.*, the owners of particates), and which may be given to the Magistrates and Council at their annual election by a proper deed or act in the Council Books to be subscribed by the proprietors, if it is thought expedient that the power of letting should be vested in the Magistrates and

Council. . . . It does not occur to me that the Duke of Buccleuch, as superior, has any title to prevent the proprietors of the particates from letting or disposing of the Commonty as they think proper."

[James Montgomery, born 1721, Sheriff of Tweeddale (his native County), Solicitor General, Lord Advocate, and in 1777 appointed Lord Chief Baron of the Court of Exchequer. He retired in 1801 when the title of baronet was conferred on him. He purchased the estate of Stanhope in Peebleshire, and was an enthusiast in agriculture and estate improvement. "His extreme kindness of disposition, readiness of access, and the universal estimation in which he was held led him into a multiplicity of gratuitous, but not the less salutary or important labour. In the arrangement of private affairs among his neighbours, and in becoming the honoured arbiter in matters of dispute, he was so frequently engaged as materially to interfere with his own convenience, but whether to persons of his own rank, or to the poor, his opinions were equally and always open." (*See Kay's Portraits, 1877 edition.*) He was ancestor of Sir G. Graham Montgomery, Bart.]

1766.

Fortified by the opinion of Mr Montgomery, the Town Council, with consent of the proprietors of the particates, proceeded to let the parts of the Common* adjacent to the neighbouring heritors' lands, thus

* From the description of the marches of the different parts of the Common proposed to be let, it would appear that there were nine small holdings marked off along the marches with Winningtonrig, Hawick Shiels, Nether Southfield, Over Southfield, Newbigging, Whitechesters, Alton Crofts, Fenwick, and Whitlaw. The following place names occur in the description, hardly any of which, we are

preventing their tenants from pasturing. [This proceeding brought matters to a crisis and led to the Duke of Buccleuch, early in 1767, raising an action in the Court of Session for division of the Commonty.]

In June, 1766, the Town Council again consulted Mr Montgomery. They narrated in their memorial that a resolution had been come to to let parts of the Common, and go on to say :—

“ In consequence of this resolution certain parts of the Common were let to tenants conform to articles and conditions and signed offers and judgments of roup here referred to, and the tenants were put in possession at Whitsunday last.

“ Upon the 9th of June, last, the Duke of Buccleuch's Chamberlain, by the direction of His Grace's Doer, assembled a numerous posse of His Grace's tenants, with their servants, and attempted to replace the sheep and cattle belonging to the Duke's tenants of certain farms lying contiguous to the Common, upon these parts of it that had been let in tack, but a number of the inhabitants of the town of Hawick being likewise

afraid, can now be pointed out :—The Gripknowe, Threapridge, the Redwellknowes, the Little Muir (near Closses), and the Sadler-sike (near Alton Crofts). The Vertish Hill was spelt “ Fertish ” at this time.

assembled the cattle belonging to the Duke's tenants were driven off by them after they had been put upon the Common by the Duke's party, and it was with great difficulty that a riot was prevented. The proceedings about this matter will appear by an instrument of protest taken by the town of Hawick, and by a copy of the letter from Mr Archd. Campbell to the Duke's Chamberlain, who has now received directions to take a precognition before the Sheriff against such of the Hawick people as were most active in opposing the Duke's tenants from replacing their cattle upon the Common.

"It will appear that the Duke of Buccleuch's tenants of certain farms lying contiguous to the Common have been in use of pasturing their cattle upon those parts of the Common next to their farms, and the town of Hawick can show no act of interruption in writing, though it is a certain fact that they have been in use of riding their Common annually for time out of mind.

"The Duke of Buccleuch stands infeft in the Common by Charter under the Great Seal, 12th February, 1751, and it is to be observed that the words in this Charter differ from the words in the Charter 1675, expedite upon the resignation of William, Earl of Queensberry, in this particular that the words, '*cum*

omni jure titulo et interesse quod Willielmus, comes de Queensberry, habet ad communitatem, &c., which are contained in the old Charter are left out in the late one. . . .

"But, however, the point of right may be determined, the inhabitants of Hawick want to be advised how to conduct themselves as matters presently stand. . . . If matters continue in the present situation it is much to be dreaded that disorders and riots may ensue. . . .

"All the farms belonging to the Duke of Buccleuch, which claim any right of pasturage in Hawick Common, lye within the Lordship of Whitchesters. The Charter under the Great Seal, 1463, annexing the lands of Whitchesters to the Barony of Braxholm, has been looked into, but there does not appear a word in it in relation to the Commonty of Hawick. . . .

"As the people of Hawick have hindered the sheep and cattle belonging to the Duke's tenants from pasturing upon the Common ever since Whitsunday last, they want to be advised if they may continue to keep them back until such time as they shall be inter-pelled by order of law." To this memorial Mr Montgomery (now Lord Advocate) gave the following as his opinion :—"18th June, 1766. . . . As some of the Duke of Buccleuch's tenants have had

a possession, which I understand to be immemorial, of certain parts of the Commonty, which is a fact that was not explained in the former memorial, I am very clearly of opinion that it would be highly improper, and, indeed, would be very unlawfull, in the proprietors of the particates or the Inhabitants of the Town to follow out their design of dispossessing the Duke's tenants of what they have had possession of formerly, until the question of right is tried."

Lord Advocate Montgomery appears to have been consulted a third time during this year, and also to have been waited on by a deputation, as on 3rd July he gives, *inter alia*, the following opinion:—"After considering the above memorial, and hearing the nature of the possession described by the two gentlemen who have come in from Hawick, I see this case in a very different light, and incline to be of opinion that the Duke has at least a right of servitude upon the Commonty for pasturing the cattle of his contiguous farms, agreeable to the usage that has immemorially obtained; but I am very far from being clear in this opinion, nor is it possible to know, with any degree of certainty, in what light a court may take this matter, and much would depend upon facts with regard to the possession, &c." He

also suggested that the best course to settle the question was by arbitration, and urged that the town should desist from excluding the Duke's tenants from pasturing on the Common.

1767.

All parties being anxious to have the question of right to the Commonty settled, His Grace, Henry, Duke of Buccleuch, then a minor, with consent of his Curator and commissioner, raises an action of declarator and division of the Commonty. This action was called in the Court of Session on 28th February, 1767.

Mr Robert McQueen, advocate, was counsel for the Town.

[This was the famous Edinburgh Advocate, Robert McQueen, afterwards Lord Braxfield, the original of R. L. Stevenson's "Weir of Hermiston." As shewing the nature of the consultations which the dounce Bailies of the town would have with their counsel, we extract the following from an extremely interesting article on Lord Braxfield by Mr Francis Watt in the "New Review":—"He was a boon companion of the choicest, a magnificent toper, though on that strong head, that iron frame, that seasoned stomach, no potation took effect. Legal consultation, like other business, was done in the tavern. Here, over a long succession of drama, the client told his story, the agent made his suggestion, the advocate gave his opinion. One can imagine the delight with which the bonnet laird, whose 'ganging plea,' in one shape or other, had tried the temper of 'a' the fifteen' again and again, must have seen this jovial counsel seize, as by art magic, on the salient features of his case, and explain with admirable brevity and clearness in an

accent broader than his own, and with a delightful garnishment of oaths, exactly how things were and exactly what things ought to be done, so that in the future all was plain sailing. Nor did McQueen's services stop here. Having supplied his client with anecdote enough to feed the country-side for the next twelve month, he, like as not, closed the evening, or the morning, by drinking both client and agent under the table, just in time to allow him to repair to the Parliament House, to argue with his accustomed clearness and exactness before their Lordships until noon, when he and his fellow lawyers would repair in quaint procession across the Parliament Close for their meridian in John's Coffee House. No wonder that he rose to be the most popular advocate at the bar, and had fifteen or twenty cases in one day before the Lord Ordinary. He was raised to the bench as Lord Braxfield in 1776. On the bench his characteristics were accentuated and made, of course, more noticeable. He exaggerated his Scots of set purpose."

Numerous stories are still told of his broad humour and coarseness. It was he who addressed a prisoner after an eloquent appeal — "Ye're a vera clever chiel, man, but ye wad be nane the waur o' a hanging." Lord Cockburn characterises him as the bloody Jeffreys of Scotland in the iniquitous political trials of 1793 and 1794.]

The proof as to the bounds and limits of the Commonry, and the time, way, and manner of its possession, was led at Hawick before Commissioners appointed by the Court on 14th, 15th, and 16th October, 1767. Six witnesses proved the boundaries of the Common, ten witnesses were examined for the Duke of Buccleuch, and nine for the town of Hawick. (See the proof printed in the Appendix.) From the roll of defenders the number of proprietors of particates seems to have been about 170.

This action, by consent of parties, fell asleep, the question being ultimately settled by arbitration.

1768.

Mr Robert McQueen, advocate, before mentioned, having been consulted by the town on the evidence adduced, gives the following opinion:—"As to the merits of the Duke's claim in the Commonty, it is not without difficulty. I observe, on the one hand, that the town hath considered themselves as proprietors of the Commonty, and have always acted as such. But, on the other hand, the Duke has brought a pretty strong proof that his tenants for time immemorial have been in use to pasture, and to cast peats, &c., in the Commonty, and I do not think it a clear point whether this possession may not be found sufficient to give the possessors of these tenements a servitude of pasturage, and of casting fuell, feill, and diviot in the Commonty.

"The opinion of

"(Signed) ROBERT MCQUEEN.

"EDINBURGH, 13th August, 1768."

1769.

July 3.—Which day, the Magistrates and Town Council of Hawick, with the proprietors of particates and other inhabitants, Burgesses of the said town,

under subscribing, being convened in the council-house, and taking into their serious consideration the present state of the Commonty, or Common Muir of Hawick, from which the town, as a community, *reap no manner of benefit*, although some of the Burgesses send their cows, horses, and sheep to pasture there, under the care of a common herd, being the only use to which the Commonty can be applied in its present uncultivated state; and that the community of the town of Hawick have no other common good, or public fund, to be applied for the exigencies, benefit, or utility of the said town; and considering that His Grace, Henry, Duke of Buccleuch, who pretends that certain farms belonging to him, lying adjacent to the said Commonty, have a right of pasturage upon the same, has raised a process of declarator and division of the said Commonty before the Court of Session, in which a proof has been led; and that, until either the said process shall be determined in course of law, or amicably settled with His Grace, and either the whole, or a certain part of the said Commonty, be allocated to the town as their undisputed property, the same cannot be set in tack, or disposed upon by them, or the rents thereof applied for the public uses, or benefit of the said town. . . . And the Magistrates and Town Council of Hawick, pro-

prietors of particates, Burgesses, and inhabitants of the town of Hawick, being desirous to avoid all law-suits with his said Grace, the Magistrates and Council, subscribing for themselves, and in name and behalf of the whole inhabitants of the said town, have nominated, constituted, and appointed, and do, by this, their public act, nominate and appoint, Walter Ruecastle and William Elliot, present bailies; John Gladstains, town-clerk; William Scott, town-treasurer; John Elliot, tanner; Robert Scott, junior, baker; James Dickson, merchant; John Hardie, merchant; James Rodger, wright; or any five of them, a quorum, as commissioners for, and in name and behalf of, the Magistrates and Town Council, proprietors of particates, Burgesses, and inhabitants of the town of Hawick; giving, granting, and committing to the said commissioners, or quorum of them aforesaid, full power, warrant, and authority, to enter into a treaty with the managers for His Grace the Duke of Buccleuch, for compromising and settling all differences and disputes betwixt His Grace and the said town: and particularly, the foresaid two questions with respect to the Common and multures, and to sign submissions, and all other deeds necessary for carrying the said treaty into execution, and rendering the same fully complete and effectual; and which deeds, so to be

signed by our said commissioners, we oblige ourselves to hold firm and stable; it being always hereby provided and declared, that no part of the said Common is to be sub-divided amongst the proprietors of particates, or other inhabitants of the town, and that the mosses, and a part of the Common are to be reserved for pasturage, fuel, fail, and divot, to the inhabitants, as formerly.

[Signed by 144 Burgesses and owners of particates.]

1770.

Letter to Mr Samuel Mitchelson, W.S., Edinburgh,
the Town's Law Agent—

SIR,

Agreeable to your desire, p. Bailie Hardie, we have sub-joined the things following, viz. :—

The yearly rent of the town p. account sent, £1465 6 6

The number of cattle pastured on the
Common by the town, viz. :—Sheep,
72 score this present year and 100
score in former years. Cows, 120.

Horses, 62 before the herd, and as many
or more (when unemployed) by pro-
prietor's servants, the yearly value of
which we leave blank.

The yearly benefit arising to the town by
peat and turff, 107 10 0

The yearly benefit of diviot for covering
the houses of the town, they being all
covered with thatch and diviot, two
or three only excepted, 55 0 0

£1627 16 6

2 B

The yearly expences the town have been
 at for 233 years bygone and time
 immemorial in marching and riding
 of Common, £60 0 0

There is one thing which we do not remember to have been hitherto taken notice off and that is that the town herd has always been in use to take in cattle, the pasturing whereof is allowed for part of his yearly wages, and that the cattle so pastured both by His Grace's tenants and the other counterminous heritors were pastured at as expensive a rate as these from distant places, which assertion may be proven if required.

We are, SIR,

Your most humble servants,

(Signed) JOHN HARDIE.

(„) ANDREW SCOTT.

HAWICK, 13th December, 1770.

From the draft of an undated memorial of this period the number of Burgesses* is 437, "the number of houses in the town of Hawick, belonging to Burgesses, amount to 206 which produce of yearly rent the sum of £1465 6s. 6d. sterling, and are valued at £31,129 sterling. As slates are at a great distance and can only be purchased at a most exorbitant expence, the whole of these houses, together with their stables and other

* The admission of ordinary Burgesses seems to have been discontinued about 1859, the Hawick Municipal Police and Improvement Act of 1861 altering the number and method of election of the Town Council.

office-houses (one or two excepted), are covered with thatch and divot and which require to be frequently renewed. The whole of these divots the Burgesses have been constantly in use to get from the Common without any limitation." In a letter to Mr Mitchelson it is stated that "few Burgesses take less every year than 1000 turfs."

[See end of Annals for some statistics of the present day.]

1774.

Mr Robert McQueen is again consulted by the town. In his opinion, dated 29th September, 1774, he says :— "I am humbly of opinion that the proof is sufficient to entitle the Duke of Buccleuch, Fenwick, Flex, Weensland, Burnflat, Bailly Turnbull, and George Kerr, to a share and interest in the Commonty." He also suggests that, to save further expense, the town might offer the Duke of Buccleuch and the other heritors one-third share in the Commonty.

December 17.—The town, and the parties interested, agree to refer the question of division to the amicable decision of the Hon. James Montgomery, Lord Advocate—a previous reference having fallen through owing to the death of Mr Thomas Turnbull, Burnfoot, one of the arbiters.

1776.

The Hon. James Montgomery (now Lord Chief Baron of Exchequer) issues his award, apportioning fourteen-twentieths of the Common to the town, and the remaining six-twentieths to the Duke of Buccleuch and the other heritors. He remits to Thomas Scott of Stonedge to make the division according to the above proportions.

1777.

Mr Scott of Stonedge makes out the division. His experiences are not of the pleasantest, as shown by the following letter to Mr Mitchelson, W.S., the town's agent :—

GRANGE, 17 May, 1777.

SIR,

. . . When I was at Hawick, going out upon the division, the mob were very riotous, pelted the chaise I was in with the surveyors, Mr Ogilvie himself, the Magistrates, and all the party concerned, they were, indeed, at last pacified, but it's evident they stand in no aw of the Bailies or Town Council, and that if the division is delayed they will tear up and leave no surface on the Duke's part of the Common, without the managers having it in their power to prevent it which must be the foundation for new remonstrances and petitions, &c., &c.

I am, SIR,

Your most obedient servant,

THOMAS SCOTT.

The following is the apportionment of the Common among the claimants, by the arbiter's final award, dated 24th May, 1777 :—

	Scots Acres.	Imperial Acres.
Robert Oliver of Burnflat, about 10 equal to about	10	13
Duke of Buccleuch, - „ 330 „ „	330	419
John Laing of Flex, - „ 7 „ „	7	9
Thomas Turnbull of Fenwick (including Captain Scott of Weenaland's share), - - - „ 15 „ „	15	19
Robert Oliver, John Laing, and Thomas Turnbull, the south side of Whitechesters Moss, - - „ 4 „ „	4	5
The Duke of Buccleuch, the remainder of said Moss.		
The Town of Hawick, - „ 853 „ „	853	1084
	<hr/> 1219	<hr/> 1549

Fortunately for the town, the arbiter decided that the Common Haughs and Myreslawgreen did not fall to be divided.

[See plan of the Common at end. The yellow dotted line shows the boundary previous to division, and is taken from the plan prepared by instructions of Lord Chief Baron Montgomery. The distance round the old boundary is over ten miles. The portion coloured red shows that presently belonging to the town,

and is practically the same as laid off in 1777 by the arbiter and allotted to the town, with the exception of excambions of small portions here and there for straightening of marches, and a field of about $7\frac{1}{2}$ acres at the east end of Vertish Hill, sold in 1847 to the heritors of Hawick Parish for £262 10s. in order to be excambied with the Duke of Buccleuch for new burial ground at Wellogate. The Acreknowe Reservoir is partly constructed on ground feud from Stobs estate.]

Proclamation anent Riding the Common :—

These are to give advertisement to all Burgesses within the Burgh and Town of Hawick, and Burgesses without the same, that the Bailies and Council are to ride the Meiths and Marches of the Commonty of Hawick, now allotted and set off to them by James Montgomery of Stanhope, Lord Chief Baron of his Majesties Exchequer of Scotland, upon Friday, the eight day of June next, as hath always been usual, therefore warning all the said Burgesses to attend the Bailies and Council that day in their best apparel to the effect foresaid under the penalty of ten pounds Scots, and also, in virtue of the authority foresaid, hereby discharge all the adjacent Heritors, their Tenants or Cottars, to pasture any cattle upon that part of the Commonty aforesaid, otherwise the cattle so found will be poidned for trespass *toties quoties*.

[Doubtless the Burgesses and Callants this year would feel that the glory of their Common-Riding had departed, and many wistful glances would be cast towards the ancient meiths and marches by Troutlawford and the Auld Ca-Knowe, no longer part of their immemorial heritage.]

1778 to 1781.

No sooner is the long delayed question of the division of the Common settled than the town is plunged into fresh litigation. The Council having let part of the Common, Walter Freeman and others (called

the Patriots) institute an action in the Court of Session to have the powers of the Burgesses to elect Bailies, &c., defined, and to have it declared that the Burgesses had good right to pasture cattle on the whole of the Commony allotted to the town. The Town Council institute a counter action, concluding, *inter alia*, that they had a right to regulate the pasturage, and also that they had power to let a portion of the Common. The adherents of Walter Freeman were 205 in number, viz., particate Burgesses, 65, and Burgesses not proprietors, 140. The ultimate decision empowered the Magistrates to let the Common and fixed the number of the Corporation at 31. We extract the following from the pleadings of the parties, reminding the reader that these strong pleadings would, as was customary, very likely be dictated in some tavern in the High Street of Edinburgh. (*See note to Guy Mannering*—"Convivial Habits of the Scottish Bar;" and note on Robert McQueen, Lord Braxfield, p. 180 hereof.)

Extracts from the pleadings of Freeman's party *circa* 1780 :—

This was a very generous Charter on the part of the granter, calculated to encourage trade and manufactures, and to render Hawick a very free, happy, and independent place. And it accordingly had the intended effect for a great number of years. The

proprietors of the different particates built a number of houses. Tradesmen of all denominations flocked to the town, purchased, built, or took houses, and were admitted Burgesses upon their paying a very reasonable sum to the Common funds. By this admission they were intitled to the privileges of exercising trade and carrying on merchandize, and to the privilege of pasturage upon a large Common belonging to the town, which was the particular motive that induced many industrious tradesmen to resort to this place, so that this town in a short time became very populous, and carried on trade in different branches to a considerable extent. The tradesmen formed themselves into different societies and incorporations to the amount of five in number, and they elected two deacons or quartermasters to each trade for overseeing their different affairs and business; and, as the generality of the inhabitants of the town were composed of those tradesmen, the deacons or quartermasters elected by them came to act in the characters of Counsellors to two Baillies who had been elected by a pole among the Burgesses at the Michaelmas of each year; and while matters continued upon this footing, as the election of the Baillies was by the majority of voices of the Burgesses, and as the quartermasters of the trades were also elected by these several trades, which composed the great body of the people, and who were particularly interested in the welfare and administration of the town's affairs, this little town of Hawick flourished, and its Burgesses and inhabitants were free and happy. But at last politicks—the great bane of every society—crept into this industrious village, for although they had no interest in the great pollitics of the nation as to members of Parliament, yet the dignity of the office and the appellation of Baillie attracted some, while the emoluments or advantages that might be made of it attracted others. For the Baillies at last came to consider themselves as in a manner vested with all the town's property, and that they might use and dispose of it at pleasure, without controul at least. This office became at last like a sign post to an inn, and a man that wanted to set up a public-house used his influence in the first place to be created a Baillie. By which means as he dispensed the law to the inhabitants

and often within his own doors, had the handling of all the little revenues of the town, assumed the appointment to all the little offices and right of conferring favours, whereby these Baillies created a sort of thirlage that drew all the drinking to their own houses. They even excited a spirit of drinking and dissipation, for it was considered as one good method of being friends with the Baillies and having their countenance, the being good customers to their houses.

The Lord Ordinary will observe that by the Charter of this Burgh the proprietors and Burgesses thereof were conveyed into a large and extensive Commonty, according to certain boundaries as described in the Charter, and which the Burgesses used to perambulate once in a year. But, as already described, by a certain set of men getting in and maintaining themselves as Magistrates of the place, the rights and privileges of the Burgesses were very ill-attended to by those who pretended to act in the administration. Some of those Magistrates had little or no right in that Commonty themselves. If they got good sale for the two penny and drams, that was the great object of their trade or their interest in the welfare of the town of Hawick, so that they were not only remiss in preventing encroachments by neighbouring heritors upon this Commonty, but, in some late instances, as if it had been their property, they took upon them to gift it or let it out in grazing to others, to the ruin and destruction of the grass, calculated for the subsistence of the cattle of the Burgesses, and which only was the unquestionable property of those Burgesses. By this means it so happened, that some few year ago, some neighbouring heritors, who had encroached or had obtained indulgences from the Baillies, brought a division of this Commonty, which the Lord Ordinary will observe was all disposed to the town of Hawick as their unquestionable property, or a Commonty solely appropriated to the town, and the Baillies took upon them to submit this question, contrary to the opinion and inclinations of a great number of the Burgesses, and so it happened that, by the decret arbitral following on this submission, the town of Hawick was cut out of a considerable part of their Commonty

lying within their ancient boundaries, and which had ever been held as their unquestionable property.

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The Town Clerk was cited thereupon, and John Wilson, one of the Baillies and Defenders, and all they had to exhibit were three books, commencing the first of October, sixteen hundred and thirty-eight, and coming down to the present time, but in which there are many chasms, and the elections of sundry years totally wanting; and it seems pretty strange that the records of the town should be wanting for one hundred years prior to this date. For this village of Hawick was a very ancient Burrow of Barony, and altho' by the renewal of the Charter in the fifteen hundred and thirty-seven, it appears that the writs and evidents of the inhabitants had been destroyed by the inroads of the English, yet from that period down to the sixteen hundred and thirty-eight there is no such pretence, and yet how there should be no record for a century is somewhat unaccountable, unless it can be imputed to some of the after managers, who, in order to serve their own political purposes, did not wish that the mode of the government of this town should be known in its early and pure days.

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Had the Baillies confined themselves strictly to what belonged to that office, perhaps the inhabitants might have had less reason to complain, or at least would have sitten more lamely down with the usurpation. Although even this was attended with much inconvenience, for the Baillies being generally a set of poor low men, and as they had the power of determining all the little differences among the inhabitants, it was generally thought that he that drunk most in the Baillies' house had most interest in the decision, and got the best law. But this was not all; those Magistrates not only neglected the interest of the town by allowing their Commonty to be encroached upon, and a good part of it carried off by contentious heretors, but also, to accommodate and curry favour with jobbers and drovers, who came about their houses, used to give them the liberty of putting what cattle they choosed upon the Commonty,

and thus destroying the grass and pasturage that belonged to the inhabitants.

For altho' Hawick is an inland town, and at a considerable distance from the sea on either side, yet it is possibly the most flourishing town of its size in the South of Scotland. The representers attribute this, and indeed it is well known, that its being so is principally owing to the Commonty with which the Burgesses and inhabitants are accomodated. Not only do the poorer inhabitants receive a considerable part of their support from their cattle being maintained on the Common for a great part of the year, but such of the inhabitants who keep horse, having a place where they can be put out to when not actually employed, they are thereby kept at much less expense to the inhabitants of Hawick than they are kept by those of any other town or village in the country. The consequence is that the people of Hawick are employed to transport goods betwixt the east and west coasts, and are, in a manner, the factors or carriers for the whole of that part of the country, and the profits arising from this branch of business is one of the principal causes of the flourishing condition of the place.

Extract from the pleadings of the Town Council in
Freeman's action *circa* 1780 :—

The Common Muir being extensive, the conterminous heretors acquired rights of pasturage from it by long possession, and some years ago His Grace the Duke of Buccleugh brought an action into this Court for dividing the surface of it. That action depended for a considerable time. After long proof was taken, and a state prepared, the parties entered into a submission, first, to two lawyers and two county gentlemen, afterwards to the present Lord Chief Baron alone, who pronounced a decret arbitral, by which he decerned fourteen parts of twenty to belong to the town of Hawick. In every community where any eminence or distinction, however inconsiderable, is to be attained, there are always to be found some persons of a bustling, factious spirit, who, if they are not thought worthy to be at the head of the respectable part of their fellow-

Which having been read by the Clerk, the Magistrates and Council unanimously voted their thanks to Mr Nixon for his present, and ordered the Clerk to communicate the same to Mr Nixon by letter, and the Council further unanimously recommended to the Magistrates to present Mr Nixon with a Burges ticket, creating him a honourary Burges of the Burgh, and to order the Clerk to transmit the same with their vote of thanks.

1809.

May 16.—The Town Council adopt the following Regulations :—

“ The Cornet shall be chosen as usual. The clothes making and all previous meetings and expense shall be entirely laid aside. The Cornet and his two men shall be obliged to make up a List, and to invite Burgesses and Burgesses’ sons as usual to ride and dine with the Cornet on the Common-Riding day. But none but Burgesses and Burgesses’ sons above the age of eighteen shall be invited. The Cornet may, however, invite such of his own relations as he thinks proper. This invitation shall be given on the Tuesday preceeding the Common-Riding day, either verbally or by circular cards, but at the time this invitation is given it shall be announced to the Persons invited, that if they intend to dine they must at least two days previous to the Common-Riding day take out a Ticket at five shillings, for the purpose of defraying the expense of the dinner, &c., which Ticket shall be given out by the person appointed by the Cornet to furnish the dinner. That the Cornet and his two men shall wait upon the Chief Magistrate the evening before the Common-Riding day to know the hour of his riding next day, and may then dress the Colour. That the ceremony shall commence and terminate on the Friday. The Marches shall be rode as usual, and

the Burleymen to be appointed and to dine as usual. The Cornet and those invited who have taken out Tickets to dine as usual, but the Cornet to be no more expense than any of the Company, and when the 5s each is expended the company may either collect more or disperse," and the magistrates and council appoint the same to be printed and distributed.

June 6.—There was laid before the Council a paper purporting to be the memorial of the undersigned Burgesses and Sons of Burgesses of the Burgh of Hawick respecting the Common-Riding, which having been read, the same was found to be conceived in language highly disrespectful and improper. The Council, therefore, unanimously refused to take the same into their consideration.

Thereafter it was moved that the plan and regulations respecting the Common-Riding, adopted by the Council upon the 16th May last (and which was adopted in the form in which it was laid before the Council by the Committee, in consequence of its having been represented by a member of the Council that it would meet with the universal approbation of the whole Burgesses of the town), should be reconsidered in respect it now appeared that the plan and regulations might be susceptible of some salutary alterations—which motion, having been considered, the Council unanimously agree to the said motion, and resolved :—

“That the age limited by the former plan shall be Sixteen in place of Eighteen. That in place of relations only, the Cornet may invite his friends or acquaintances. That the invitations shall be given on the Monday in place of the Tuesday. That the Cornet and his two men shall wait upon the Chief Magistrate the evening before the Common-Riding day to know the hour of his riding next day and may then dress the colour, but without prejudice to the Lads meeting on that night as usual.”

1816.

May 14.—The Magistrates and Council strongly recommend to the Cornet not to incur any unnecessary expense in entertaining the Company at the Common Riding.

Annual Proclamation read by the Town Clerk at the Cross after Riding the Common (endorsed each year from 1816 till 1855—not read 6th June, 1856):—

These are to give notice to all Burgeses within the Burgh of Hawick that they are discharged from casting dry land soads of any part of the Commonty or roughheads (except roughheads in the Mosses), and from casting turfs or diviots on the Common, except for the soews and riggings of houses within the Burgh belonging to Burgeses, which must be led away without fitting or winning them on the Muir, under the penalty of twenty shillings for each offence; and all persons who are not Burgeses are prohibited and discharged from sending horses, nolt, or sheep to pasture on the Commonty.

For as much as the Bailies and Council of the Burgh of Hawick, with the Burgeses of the said Burgh, have this day ridden the meiths and marches of the Commonty of Hawick, as has been in use yearly since the division of the Commonty, without interruption or molestation of any sort. Therefore, if any nobleman, gentleman, or

others, having lands lying contiguous or adjacent to the said Commonly, shall find themselves leized or prejudiced in any sort by this day's marching, they are hereby required to state their objections thereto to the Bailies and Council of the said Burgh within forty days from this date, otherwise they shall be held to have acquiesced in the said marching.

JOHN OLIVER, Clk.

1817.

The following letters will show how the Burgh Seal was actually composed and executed in 1817. They have been copied for us through the kindness of Mr James Oliver, solicitor, Mayfield, and they explain fully the history of the Burgh Seal. Mr John Oliver, his father, was the Town Clerk of the time. The letters are of great interest, shewing, as they do, the firm belief in the tradition held by the Town Council and the Town Clerk, and doubtless by the whole community :—

To Mr JOHN SANDERSON, Lapidary, 7 Hunter Square, Edinburgh.

HAWICK, 14th April, 1817.

SIR,—Since I had the pleasure of seeing you in Edinburgh in the end of March last, and of conversing with you respecting a Seal for the Burgh of Hawick, I have been anxiously waiting to be favoured with the draft which you then promised to send me. You will recollect that I then referred you to the article, "Hawick," in Brewster's Encyclopædia, for the best history of the constitution of the Burgh. The materials which you will find there, together with the enclosed copy of our Charter which I now beg leave to send you, will, I trust, enable you to strike out some appropriate device. From the date of the Charter, it would appear to have been granted by the seventh Baron of Drumlanrig, mentioned in Douglas peerage, but from the narrative of the Charter—which was a renewed grant,

in consequence of the original Charters having been destroyed by the inroads of the English—it is impossible to say how long the town may have existed an independent Burgh prior to the 1537.

I may likewise remind you of what I mentioned when I had the pleasure of seeing you in Edinburgh, that the Common Muir of Hawick, mentioned in the Charter, is an extensive territory, and past memory of man (probably coeval with the erection of the Burgh) it has been the practice of the Magistrates and Council of the Burgh to ride round the marches of the Common accompanied by a young man, chosen annually from among the Burgesses for that purpose, called the Cornet, who carries a standard of blue silk, which tradition says was taken by the townsmen of Hawick from the English in some rencounter which they had with them in the neighbourhood of Hawick in the year 1514, and the flag bears the figures 1514 upon it. This, I think, is all the information which I am enabled to communicate, and from it, I hope, you will be enabled in a few days to favour me with a draft of the device. Should you be desirous, however, of any further information, I request you will have the goodness to let me know. It occurs to me that the large Seal should not be less than the size of a three shilling piece, and the small one about the size of a new shilling.—I am, &c.,

(Sgd.) JOHN OLIVER.

P.S.—The Charter, of which I now send you a copy, was afterwards confirmed by a Royal Charter from Queen Mary, 12th May, 1545.

(To the Same.)

HAWICK, 28th April, 1817.

SIR,—I was duly favoured with yours of the 19th inst. enclosing draft of a Seal for the Burgh of Hawick. I have taken the earliest opportunity of laying it before the Magistrates and Town Council, and have the pleasure to inform you that it has been approved of. I now return you the sketch, and beg you will have the goodness to proceed with the engraving of the two Seals as soon as possible. Of course it will be understood that the small Seal is to contain the motto on the garter the same as the large one. I have no doubt

you will have plenty of Robert's Linn jasper to make the small Seal, but as the Magistrates wish to have the large Seal fully an eight of an inch more in diameter than the sketch, perhaps you may not have any piece of Robert's Linn sufficiently large for the purpose. You will observe the Magistrates and Council wish both Seals to be made of Robert's Linn stone, and in the form you spoke of when I was in Elinburgh, with a box to keep them in. I have assured the Magistrates and Council that the engraving will be done in a superior style, and I flatter myself the execution will bear me out in this assurance. I shall just only presume to offer one suggestion on the subject, which is, that the engraving may be sufficiently deep to make a full and bold impression, and, above all, let the impression of the Seals bear as striking a resemblance as possible to the objects intended to be represented. If I have not the pleasure of hearing from you in the course of a few days, I shall take it for granted that you have a piece of jasper of sufficient size for the large Seal—that is fully an eight of an inch more in diameter than the sketch—and that the work is in progress.—I am, &c.,

(Sgd.) JOHN OLIVER.

[The total cost of the two Seals made to the design thus executed by Mr Sanderson was £5 8s. 6d. Of this sum £1 11s. 6d. was for the smaller Seal, and was paid by Mr Oliver himself, he presenting this Seal to the Burgh. This leaves £3 17s. as the sum actually paid by the Burgh for the Seal complete, surely a sufficiently moderate sum.]



[The heart, *ensigned with a royal crown*, does not appear to have been borne by Sir James Douglas on his coat of arms. See facsimile

of his Seal to Burgh Charter, p. 124, where the heart is shewn without the crown.]

May 7.—The Magistrates and Council taking into their consideration that the Common-Riding has been very hurtfull to the morals of the young people in the Town, resolve that there shall be no Cornet chosen this year, and that the flag shall be carried round the Common with the Magistrates and Burleymen accompanied by the Town Clerk and Treasurer.

May 19.—There was laid before the Magistrates and Council a Petition signed by Peter Wilson, Junr., Andrew Dickson, and sundry other Inhabitants of the Town, praying that the Magistrates and Council might be pleased to restore the Common-Riding under suitable regulation, which, having been received and taken into consideration, the Magistrates and Council rescind the resolution of last Council respecting the Cornet, and resolve that a Cornet shall be chosen as usual. Thereafter the Magistrates and Council made up the following leet for the election of the Cornet, viz :—

ANDREW DICKSON, younger of Housebyres ;

JOHN HARKNESS, Mason ;

JAMES INGLIS, Junr., Mealdealer ;

WALTER WILSON, Junr., Wright ;

WILLIAM MILLAR, Painter ;

and by a great majority elected the said Andrew Dickson to be Cornet, and ordained, and hereby ordain him to carry the Town's Standard round the marches of the Commonty on Friday, the sixth day of June next, and the Magistrates and Council ordained and enjoined, and do hereby ordain and enjoin, the Cornet strictly to adhere to the plan and regulations respecting the Common-Riding adopted by the Magistrates and Council upon the sixteenth day of May, Eighteen hundred and nine, as altered and amended by the Magistrates and Council on the sixth day of June, same year, and appoint the Clerk to transmit a copy of the said printed regulations and amendment thereof to the Cornet for his information and guidance.

[We close the Annals at this date, the period to the present day having been already extensively dealt with by several writers.]

MEMORANDA, STATISTICS, &c.

NOTE OF ANNUAL INCOME FROM THE "COMMON IN THE COMMON HAUGH AND COMMON MUIR OF HAWICK," FOR THE YEAR 1897.

Pilmuir Farm, acreage, 559 ; rent,	-	£297	0	0
St. Leonard's Farm, acreage, 121 ; rent				
(less abatement),	- - -	163	18	4
Vertish Hill and Pilmuir Grass Parks,				
acreage, 239 ; rent,	- - -	211	0	0
Reservoir ground rent,	- - -	27	14	0
Shootings,	- - - - -	10	0	0
Sundry small rents, &c., Hawick Muir,		16	2	4
Amount of annual feu-duties, drawn				
from portions feued at Common				
Haugh, Myreslawgreen, Loan, &c.,		236	10	0
Sundry rents received from Common				
Haugh, Sand-banks, &c.,	- -	38	16	0
Total Annual Income,	-	£1001	0	8

NOTE.—Exclusive of revenue from Town Hall and the Mansfield feus.

<i>Assets</i> of the Burgh (common good),					
including the Hawick Muir pro-					
perty, Common Haugh, the Town					
Hall, the feu duties, &c., 1897, -					
				£59,900	0 0
<i>Liabilities</i> of the Burgh (common good),					
1897, - - - - -					
				33,312	0 0

NOTE.—The Under Common Haugh was sold to the North British Railway Company, in 1847, for £3318. After receipt of this sum, the total debt owing by the Burgh was only £640.

Assessor's Valuation of the Burgh for year 1897-98,
£74,905.

Population of the Burgh in 1891,
19,204.

PART III.



APPENDIX.



APPENDIX.

PROOF IN THE DECLARATOR AND DIVISION OF THE COMMONTY OF HAWICK.—HIS GRACE, HENRY, DUKE OF BUCCLEUGH,

AGAINST

THOMAS TURNBULL of Fenwick, Merchant in Hawick, and WALTER RUCASTLE, Baker, there, present Magistrates of Hawick, for themselves, and in Behalf of the several Inhabitants of the Town of Hawick, JAMES LAURIE, Minister of the Parish of Hawick, ROBERT OLIVER of Burnflat, JOHN BOYD of Flex, SIR JOHN ELLIOTT of Stobs,* and COL. ROBERT SCOTT of Horsliehill.

The said HENRY, DUKE OF BUCCLEUGH, as standing heritably vest and seased in the lands and barony of Hawick, &c., as also in all and whole the Commonty of Hawick and Common Muir thereof, and whole other parts, pendicles and pertinents thereof, insists in a process of declarator and division of the said Commonty of Hawick, brought before the Lords of Council and Session at his

* Sir John Elliott died in 1768, and his successor, Sir Francis Elliott, does not appear to have insisted in any claims to the Commonty.

instance, with concurrence of Charles Townshend, Esquire, Chancellor of Exchequer (now deceased), his sole Curator, and of Mr John Craigie of Kilgrastown, Advocate, sole Commissioner and Cashier, appointed by the said Duke and his Curator, and also as having special power and commission to prosecute and follow furth all actions before the Court in Scotland, necessary or proper, for the interests of the said Duke, against the said Thomas Turnbull and Walter Rucastle, present Magistrates of Hawick, for themselves and in behalf of the Inhabitants of Hawick and others, lybelling upon the 38th Act, 5th Session, 1st Parliament of King William, concerning the division of Commonties. And, subsuming that the Pursuer and his tenants in the lands, baronies, and others before mentioned, have been in the immemorial possession of the foresaid Commonty and Common Muir of Hawick, comprehending what is called the Common Haugh, lying contiguous or adjacent to the lands and baronies before mentioned, by pasturing their respective catle, casting peats and divot, and using all other acts of Commonty and property upon the said Common Muir and Haugh, and thereby the said Pursuer has good and undoubted right to pursue the present action, and in respect the proprietors of the particates in and about the Town of Hawick, and the Magistrates of the said Town and Burgh of Barony of Hawick, and also the proprietors of the lands of Burnflat, Flex, and Fenwick, and of these parts of the estate of Stobs lying adjacent to the said Commonty, do also claim a right and privilege in the said Common Muir and Common Haugh, and that it would greatly tend to the benefit and advantage not only of the said Duke, the Pursuer, but of every other person interested, that the said Common Muir and Common Haugh were divided amongst those interested therein, agreeable to the foresaid Act of Parliament.

AT CALLING OF THE SAID ACTION of this date, 28 Feby., 1767, in presence of the Lord Auchinleck ordinary, the Pursuer's Procurator repeated his Lybel and active Title produced, and craved a Commission for proving *prout de jure* the Extent and Limits of the Commonty and for receiving the Rights and Title Deeds of such of the Defenders or others having Interest in and claiming a Share of the Commonty, as shall not be produced before extracting the

Act and Commission, and that the Commissioners be directed to divide the said Commony amongst the parties having Interest, agreeable to the Act of Parliament, and craved that a Surveyor be appointed to make a Plan or Map of the Commony, and Several Divisions to be made thereof, upon oath. Whereupon Mr Robert MacQueen, for the Magistrates and Inhabitants of the Town of Hawick, declared he did not oppose a Proof being allowed of the Extent and Limits of the Commony, but that his agreeing to such Proof is noways to be understood as if he thereby past from any Right of Property the Defenders have to the Grounds in Dispute, in virtue of their Charters, in the fifteen hundred and thirty-seven and fifteen hundred and fourty-five, produced. And the other Defenders failing to compear, the said Lord Auchinleck ordinary, by his Interlocutor signed by him upon the first day of July, seventeen hundred and sixty-seven years, and the Lords of Council and Session aforesaid, in respect of the Pursuer's active Title produced, sustained proces, allowed the Pursuer to prove his Lybel, the Bounds and Limits of the Commony lybelled, time, way, and manner how the same has been possess ; and gave and granted full power, warrant, and commission to persons mutually named by both parties to visit and perambulate and take cognition of the several Limits and Marches of the Commony or Muir lybelled, and to take all necessary Probation thereanent by the oaths of such habile Witnesses as shall be adduced by the parties, as well the Pursuer as by the Defenders.

The Pursuer having thereupon caused extract an Act and Commission and Letters of Diligence, and in virtue thereof cited several Witnesses for proving in terms of the said Act, the Commissioners did accordingly meet at Hawick, upon the fourteenth day of October, 1767, with Robert Scott, at Branzholm, Chamberlain to His Grace the Duke of Buccleugh, and Thomas Waugh, Writer in Jedburgh, as Proctor for His Grace, Walter Rucastle, Baker, and William Elliot, Baker, present Magistrates of Hawick, and John Glaidstones, Writer in Hawick, for themselves and in name and Behalf of all the Inhabitants of the Town of Hawick, and Robert Elliot, Writer in Edinburgh, as Proctor for them, and the said John Gladstones also compeared for John Boyd of Flex. And the six Witnesses after-

named unanimously condescended on by the Parties, Doers, and Proctors foresaid, as fit and proper persons to walk and describe the Boundaries and Limits of the Common, being solemnly sworn by the Commissioners and by them directed to walk and describe the Boundaries and Limits of the said Common or Muir of Hawick, as they respectively knew and have known the same to be, and have been possess for forty years past, and as long as they, the Witnesses, remember, which they accordingly did, and the Commissioners having reduced the Depositions of the Witnesses into writing, the whole is now reported into Court, and the Proof is as follows :—

WITH RESPECT TO THE BOUNDS AND LIMITS OF THE
COMMONTY LYBELLED.

WILLIAM AITKEN, *Carrier in Hawick, aged eighty and upwards*, JOHN AITKEN, *Cooper there, aged seventy and upwards*, ROBERT CROZER, *Workman there, aged fifty*, ANDREW THOMSON, *Workman there, aged fifty*, JAMES MILLER, *Gardner there, aged forty and upwards*, and WILLIAM OLIVER, *Workman there, aged thirty-four*, *Witnesses mutually adduced for proving the points aforesaid, being solemnly sworn, did walk and describe the Boundaries and Limits of the said Common in manner underwritten.* Beginning at the entry into John Keidzly's stackyard, on the south or south-east side of the high road without the West Port of Hawick, from thence they described the March of the Common or Common Loan by the north side of the houses possess by said John Keidzly, and the dyke on the north of a croft there to the turnpike dyke, and from thence by the south or south-east dyke of said Common Loan down to the Burnfoord where the Common opens, and then from the said Burnfoord they walked and described the east and south-east Marches and Boundaries of the Common by the march dyke betwixt Burnflat and the Common to the Cleuch on the west side of the Dimples, and from thence down the runner of the Cleuch, east thro' Sletrig Water, comprehending a gravelly haugh on the north-east side of the water, and then up the east side of that gravelly haugh opposite to the Cleuch on the east side of the

Dimples, then crossing Sletrig Water up the hollow of that Clench and east side of the upper part of the Clench by Pitts to the march dyke betwixt Whitlaw and the Common, and then along that march dyke to Whitlaw slap, and from Whitlaw slap by the dyke and Pitts more easterly and downwards, turning a little to the norward into the onstead of Muckle Whitlaw by the south side of the west-most house there. Then along that house side, turning south-east thro' a middenstead, and over the middle of the stance of a house in the midat of the town possess by Janet Martin, and from the foreside of that house by hotts down to the Hollow Burn bewixt Meikle and Little Whitlaw, comprehending the house possess by George Hogg, Herd in Whitlaw, within the Limits of the Common, which stands south of the hotts, which describes the march from the middle of Janet Martin's house to the How Burn. Then up Whitlaw Burn the whole way to where it issues from Flex dykes, and still up the same burn by hotts within the easter park of Flex, comprehending within the Boundaries of the Common that part of the easter park of Flex which lyes on the west side of the burn, with the timber trees within the park growing on that west side of the burn, up to the cross dyke from the Common into the burn at the head of that park so far as it lyes on the west side of the burn, and from thence they described the march by the dyke of Flex and hotts up the east side of the burn to the entry into Flex onstead. Then cross the entry on the east side of the burn upwards by Flex dykes, and the houses on the same east side of the burn southward to where the dyke is the march on the west side of the burn to the south end of the dykes on that side, where the march crosses the burn and runs up the bank and along the dykes at the head of the bank to the north corner of the dyke, then turning south as the dyke turns into Pilmuir Syke at the head of Flex inclosures. Then they described the march westerly by the hotts or hillocks on the west side of the syke to Flex outter dyke, the whole way southward to the edge of the bank above Flex back burn and a hillock raised there, and from thence south thro' the burn to the south side and march of the Common with Aikerknow, belonging to Sir John Elliot, and from thence south-westward up Greenside Bogg

and Winnington Moss Syke by hillocks, sometimes on one side, at other times on the other side of the runner of the bog along the march of Winnington Rigg with the Common to Winnington Moss. Then by hillocks on the south side of the moss, turning southward by hillocks on the south side of the great Know, and then westward by hillocks on the south side of the upper moss called the Black Grain, and thence west by hillocks to the Trowtlaw Foord, at which Trowtlaw Foord or west point of the Common, the Common terminates in a narrow point, and the march turns up a little eastward by the march with Hawick Sheills, by hillocks on the edge of the corn land, and then turns north-west by the vestige of a dyke and hillocks over the height down to the march betwixt the Common and Nether Southfield. Then east up the march betwixt Nether Southfield and the Common by the vestige of a dyke and hillocks to the south-east corner of that part of Southfield Farm called Langflat, from which point the march of the Common turns north along the march with Langflat by hillocks and an old dyke to the head of Whitechester Moss. Then turns east by hillocks along the north side of the moss and by the dykes of Sea Croft, a part of Newbigging, and south side of the houses, from whence the march runs northward by hillocks and the easter dykes of Sea Croft and Whytechester stone dykes to the Syke which goes down by Closses, down which Syke the march is described by hillocks to the dyke on the east part of Closses corn land, and east that dyke to the east part of the corn land, where the march turns west that corn land, up the north side of the Syke at the back of the onstead of Closses by hillocks, and then north by hillocks along Whitechester March to the cutted Syke. Then east down that Syke into Westland Burn and the dykes of Alton Crofts, and so on to Fenwick Loan head, where the march turns south by hillocks up the west side of the head of the Loan, from whence the march runs eastward along the march with Alton Crofts to the march with Gowdielands at the Hay Syke head, and thence east by the march dyke betwixt Gowdielands and the Common to the march with Crumhaugh. Then east the march dyke with Crumhaugh to the march with the Westmains of Hawick, and along the Westmains dykes down to the

Burnfoord, and from the Ford by the north dykes of the Common Loan into the Turnpyke Bar and the West Port of Hawick, and houses without the Port, opposite to the entry into the stackyard where the description begun. And the same witnesses further described a pertinent or pendicle of the Common called the Myreslawgreen, lying on the north side of the Common Loan without the Turnpyke Barr, bounded by the Duke of Buccleuch's lands on the west, the Duke's lands, the lands of Birsilton and Weylys Dub, belonging to Bailie Turnbull, on the north, the highway from the West Port to Langlands Raik on the east, Bailie Turnbull's lands, called the routed croft, and the Common Loan on the south. And the Witnesses further described the Common Haugh as follows, viz., from Langlands Cauld Back down betwixt the mill dam on the north, and the river Teviot on the south to the little house and croft butts near the east end of the Haugh, called Dangerfield,* and croesing the tail dam above Dangerfield a part of the Common Haugh lyes between Dangerfield and the reugh heugh land as described by hillocks, and a little Haugh on the south side of Teviot, bounded by William Kerr and Bailie Turnbull's garden dykes, make up the whole of what is understood by the Common Haugh. Which description of the Limits and Boundaries of the Common being read over to the six Witnesses, who walked and described the same, in presence of the Commissioners and the Parties and their Doers, all the Witnesses approve of the description of the Limits and Boundaries at reading over the same, and the said Witnesses deponed to their several causes of knowledge of the Boundaries and Limits, as described by them as follows, viz. :—The said William

* The association of "butts" and "Dangerfield" justifies the assumption that Dangerfield is the place where stood the ancient Bow Butts. "That al men busk them to be archeres, fra they be twelfe zeir of age, and that in ilk ten pundis worth of land, their be maid bow markes, and speciallie neir to parochie kirkes, quhairin upon halie daies men may cum, and at the least schutte thrise about, and have usage of archerie."—*Scots Act of Parliament, 1424.*

Aitken says he has lived in Hawick all his life, and from the time of his infancy he was at the riding the marches of the Common yearly, and they were always described as he and the other Witnesses walked and described them this day, and that at the Common-Riding every year there were men attended with spades, who took out a sod or turf from the contiguous ground and laid the same on the top of every hillock round all the marches, and every year they laid a sod on the rigging of the house at Meikle Whitlaw, which is described to be half built on the Common, and the Town's Standard was handed over the said house to and from the person on the house top, who laid on the sod upon the rigging, and he knows that timber was cut in Flex park for the publick uses of the Town of Hawick, particularly repairing the prison and buildinge the herd's house. And all the other five Witnesses swear to the same cause of knowledge, so far back as they can remember and down to the present time, and they all agree that the Common-Riding has usually been on the last Friday of May yearly. All which is truth.

WITH RESPECT TO THE POSSESSION OF THE PURSUER'S
TENANTS AND OTHERS IN THE COMMONTY
LYBELLED, AT HAWICK, THE 15TH DAY OF
OCTOBER, 1767, JOHN ELLIOT OF BORTHWICK-
BRAE, WILLIAM SCOTT OF BURNHEAD,
WALTER ELLIOT OF ORMISTON, WALTER
SCOTT OF HOWOLEUGH, JOHN MAXWELL OF
BROOMHOLM, ROBERT LANGLANDS OF LANG-
LANDS, AND THOMAS SCOTT OF STONEDGE,
COMMISSIONERS PRESENT, COMPEARED.

JOHN COOK, in *Millside*, Witness adduced for the Pursuer, aged fifty-seven, depones he was twenty-seven years Herd at Whitechesters preceeding Whitsunday, seventeen hundred and sixty-four, and he has lived at Millside since that time, and while at Whitechester he had charge of the tenant's sheep and nolt; that the sheep were put to the Common of Hawick mostly in the summer season, and the nolt through the year, that is, as well winter as

summer. He does not mean that they were daily put to the Common, as some days neither the sheep nor nolt pastured there, tho' he thought he might have put them there every day, as he never was challenged. Depones he used that part of the Common chiefly which lay nearest to Whitechester, as most convenient for him, but if that part was taken up by another hirsæl he drove his beasts further into the Common, and when the sheep and the nolt under the charge of the Common Herd came in the way of the hirsæl under the Deponent's charge, he, the Deponent, drove his beasts out of the way of the Common hirsæl, which Common hirsæl was under the charge of the Hawick Herd, and if the Deponent had not given way to his hirsæl the Common Herd would have hounded the Deponent's charge, and according to the time of day that the Common hirsæl came in the Deponent's way he either drove his charge to another part of the Common or on to his master's several ground, as he thought most convenient at the time; depones he never drove his charge or fled before any other hirsæl than that under the charge of the Common Herd, and was not afraid of being hounded by any other; depones he did not confine his charge, nor did he understand he was obliged to any particular part of the Common, tho', in fact, he never pastured his charge either to the east, south, or west sides of the Common; depones the tenants of Whitechester, their coatters and other dwellers on the farm, while the Deponent was Herd, did cast peats in the Common Mosses and turff and diviot on the Common Muir of Hawick for the use of their ffamilyn, and he, the Deponent, got elding of the Common for the use of his ffamily, and he was never interrupted; depones the Magistrates and Inhabitants of Hawick rode the marches of the Common yearly for ordinary on the last Friday of May, old stile, and the Deponent and his masters never began to cast their peats in the Common Mosses till after the Common-Riding, and he never knew any peats casten in the Common before the riding either by the Inhabitants of Hawick or other persons; depones, for ought he knows, the tenants of Whitechester had the same use of the Common for pasture, peat, turff, and diviot before he was Herd there, as they had in his time, and he has seen their beasts pasturing on the Common, and one

time particularly he was in the moss when they were casting peats, when the Deponent was assisting one of the coatters in Newbigging casting peats and making bakes in the moes ; depones that while the Deponent was Herd at Whitechester he knows that the tenants of Meikle and Little Whitlaw, Hawick Shiels, Over Southfield, Nether Southfield, Newbigging, Alton Crofts, Raesknow, Gowdlands, Crumhaugh, and Longhope, which is a part of Crumhaugh, had the like use of the Common in every respect as the tenants of Whitechesters ; that the possessors of the East and West Mains of Hawick had no particular hirsle under the charge of a herd of their own so far as he knows, and he has seen the tenants of Allanhaughmiln casting diviots on the Common for the use of the miln and kiln, and he has seen their horses pasturing on the Common, but whether they had a particular herd attending them the Deponent cannot say, and he has known, as he has deponed from the time he was first Herd at Whitechester to the present time ; and, being interrogate for Thomas Turnbull of Fenwick, depones that the tenants and possessors of Fenwick and Closses had the like use of the Common in every respect as the tenants of Whitechesters, and this he has known for the time he has mentioned ; and, being interrogate for the Magistrates and Inhabitants of Hawick, depones the tenants of Whitechester were in use to make bakes as well as to cast peats in the Common Mosses, except in Winnington Moss, where no bakes were allowed to be made either by the Hawick people or others ; and, being interrogate if ever he knew the Hawick people break the bakes and throw them into the moes holes, depones they never broke any of the Deponent's bakes. He has heard of their breaking the bakes made by the dwellers in Hawick Shiels, which bakes so broken were made in Winnington Moss ; and depones what he means by Common Herd is the Herd put in by the Town of Hawick, *causa scientiæ patet*, and this is truth, &c.

ADAM HOGG, in *Todshawhaugh*, *Witness adduced for the Pursuer*, aged fifty-seven, depones he has been ten years Herd in Newbigging and six years in Alton Crofts, both which farms border with Hawick Common, and it is eight years past at Whitsunday since he left Alton Crofts, and in both these places he had the charge of his

master's sheep and nolt, and depones he drove his charge to Hawick Common, where he pastured the same as long as he thought convenient, and as far into the Common as he saw necessary for the time he kept them there, and in the summer time he left the eild sheep of Newbigging on the Common all the night, and the ewes also before spaining time, so that these eild sheep and ewes pastured on the Common night and day for a part of summer, unless when he brought them on to the several ground to give them a rugg for a part of the day, when he turned them back to the Common all the night; depones he never met with any interruption in pasturing his charge on the Common, only when the charge under the Town of Hawick's Herd came near the Deponent's charge the Hawick Herd called to the Deponent to wear his charge out of the way, which the Deponent did by turning his charge aside untill the Town's beasts were past, and then he came in behind them or drove to another part of the Common as the Deponent saw fit; and depones he pastured his charge into the middle of the Common, tho' he cannot say he ever went to the opposite side to his master's farms; and depones that while he was Herd at Newbigging and Alton Crofts he and the other dwellers on these farms got their elding from the Common, that is, peats from the mosses and turf from the muir, and they also got diviots from the Common for the use of the houses, and never were interrupted; depones at the time he has mentioned the tenants and possessors of Hawick Shiels, Over and Nether Southfield, Whitchesters, Gowdilaunds, and Crumbaugh had the like pasturage and other priviledges in the Common as Newbigging and Alton Crofts, and he knew that the possessors of Raesknows got their elding off the Common, and put their sheep and horse to the Common after Whitsunday, and the possessors of Allanhaughmiln did cast peats in the mosses; depones the ewes of Raesknow went on the Common from Whitsunday till spaining time, and the eild sheep to Boswel's Fair and sometimes after it, which sheep of Raesknows were night and day on the Common while there, for Raesknows does not lye on the skirts of the Common, but mostly drove through Whitchester Farm to and from the Common; and being interrogate for Thomas Turnbull of

Fenwick, depones the tenants and possessors of Fenwick and Clouses pastured on the Common and got elding from the mosses and muir, and diviots for the use of their houses in the same way as Alton Crofts and Newbigging; and being interrogate on the part of the Town of Hawick, depones he gave way to the hirsel under the charge of their Herd because it was a weighty hirsel or a meikle hirsel, and he (the Deponent) had no will to maigr or mix his charge with the Hawick hirsel, and the Deponent cannot say whether the Town of Hawick Herd would have hounded the Deponent's charge or not if he had not turned out of his way, for he (the Deponent) always obeyed and made way for the meikle hirsel when the Hawick Herd called to him, and the Deponent never turned aside or gave way for the hirsels of any of the neighbouring tenants, and further depones what he means by the middle of the Common does not signify any particular part of the Common, but just as far as he thought fit.

JAMES RUTHERFORD, in *Langflat*, *Witness adduced for the Pursuer*, aged sixty-nine, a widdower, depones he was twenty years together Herd in Alton Crofts, and he has been fourteen years come Whitsunday Herd to William Grieve, in Nether Southfield, both which farms border with Hawick Common, and in all that time he has had the charge of his master's sheep and nolt, and he daily, when conveniency served and he had a mind to, put his charge to the Common; he pastured his master's sheep and nolt on the said Common without confining or restricting them to any particular place or being interrupted further than making way for the Hawick hirsel and giving them room to pass on, for it was a very weighty hirsel, and the Deponent did not chuse that his hirsel should mix with them, and after inning of the corn and the sheep were not folded, they lay on the Common night and day at the Deponent's pleasure, and the sheep many time went to the Common of their own accord; and depones when his master's horses were out of work they were put to pasture in the Common; and depones he (the Deponent) for the thirty-four years he has mentioned generally got his peats and turf for the use of his ffamily from the mosses and muir in the Common, as did the other cottars in said ffarms of

Alton Crofts and Nether Southfield, and his master got diviots from the Common for the use of the houses and such of the coatters as upheld their own houses; depones while the Deponent has herded on Hawick Common he knows that the gear belonging to the tenants of Meikle and Little Whitlaw, Hawick Shiels, Over Southfield, Newbigging, Whitchesters, Gowdilands, and Crumhaugh had the like pasturage on the Common as the gear of Nether Southfield and Alton Crofts, and the sheep belonging to the tenants of Raesknows were brought on to the Common before spaining time and remained there night and day while they had a mind to keep them there, which sheep were herded by the tenant of Raesknows' Herd, and the Deponent knows that the gear of Hilliesland, while in the laird's time, were put to the Common and pastured there in the same way as the other contiguous farms, and he knows that the sheep and cattle belonging to the possessors of the East and West Mains of Hawick are put to the Common under the charge of the Town of Hawick's Herd, and that the possessors of Allanaughmiln get elding from the Common and diviots for the use of the kiln and miln; and depones the farms of Raesknow and Hilliesland do not lye contiguous to the Common, and the gear of Raesknow is drove to and from the Common through Whitechester ground, but he does not know through what ground the gear of Hilliesland came, and the Deponent knows that the dwellers or possessors of all the farms he has mentioned got peat, turf, and diviot from the Common in the same way as the possessors of the two farms where the Deponent was Herd; and being interrogate on the part of Thomas Turnbull of Fenwick, depones that the tenants and possessors of Fenwick and Closses had the same use and privilege of pasturing the Common and getting elding and diviots there, as the possessors of the other farms he has mentioned; and on an interrogatory for John Boyd of Flex, depones the gear belonging to that farm have been in use to pasture on the Common as long as the Deponent has known it, and that the possessors of Flex enjoy all the other privileges in the Common as well as the other contiguous tenements; and on an interrogatory for the Town of Hawick, depones he (the Deponent) never gave way to any other hirsell on the Common but that of the

Town of Hawick's, and the Deponent had a notion that the country gear ought to keep out of the gate of the Town of Hawick's hirsel, and the Deponent has seen the Town of Hawick's Herd hound the gear that did not make way for his hirsel, and all the Town's Herds that were on the Common in the Deponent's time did so; depones one year Patrick Hume, in Hawick Shiels, did cast peats and make bakes in Winnington Moss, and there were some bakes made that year for the Deponent, and the said Patrick Hume's peats and bakes were broke to pieces and perhaps some of them thrown into the moss holes, and he believes they were thrown into the moss holes by persons from Hawick, and the bakes made for the Deponent were also broke and some of the peats also, for the Magistrates of Hawick at riding the Common yearly gave orders and instructions that no bakes should be made in Winnington Moss; the Deponent has cast peats in that moss since that time and made clatches without any challenge, and that year a great many peats were cast in said Winnington Moss by the inhabitants of Hawick, and he does not know that any of them was broke; and depones that tho' he (the Deponent) did cast peats and make clatches in Winnington Moss since that time, he never attempted to make bakes.

THOMAS HUNTLY, in *Newbigging*, witness for the *Pursuer*, aged seventy-three, a widdower, depones he was servant to Robert Robson, Carrier in Hawick, and who held some land near the town in year one thousand seven hundred and fifteen, and he was thirty-five year tenant in the Closes, and it is three years since he came out of it, and when he was Robert Robson's servant he took his master's horses to the Common to pasture there, and thereby had occasion to see what other beasts pastured on the Common and who had the priviledge in the mosses and turf ground, and at that time all the Duke of Buccleuch's tenants on the confines of the Common pastured their sheep, black cattle, and horses on the Common without interruption, particularly the gear belonging to the tenants of Meikle and Little Whitlaw, Hawick Shiels, Over and Nether Southfield, Newbigging, Alton Crofts, Whitcheater, Gowdiland, and Crumhaugh, and the tenants of Raesknows sent their sheep to the Common

towards the end of May, and the ewes continued on the Common night and day till the lambs were spained, and the eild sheep a gey while after ; the ewes were always herded by the tenant, and after the ewes were taken of the Common the eild sheep were either herded by the tenant or put to the charge of the Town of Hawick's Herd, and paid him for taking care of them, and the gear belonging to the possessors of the East and West Mains of Hawick also pastured on the Common under the charge of the Town of Hawick's Herd, all the possessors being inhabitants of Hawick, and all the farms he has mentioned had the priviledge in the Common for peat, turf, and diviot, and the possessors of Allanhaghmils got diviots from the Common for the use of the kiln and miln ; and depones for the thirty-five years that he was tenant in Closses his sheep and cattle and horses pastured on said Common without interruption, and he had little else to fend his stock on. All the grass he had on Closses would not maintain a cayley cow, and for the whole of said thirty-five years all the other farms and tenements he has mentioned did pasture and use the Common, as he has deponed, for the year seventeen hundred and fifteen. And when Hawick milns needed cover, the diviots were cast on the Common for the milns and miln houses ; and depones the possessors of Fenwick had the like priviledge in the Common, as the other tenements and Fenwick and Closses belonged to the same proprietor, while the Deponent possessed Closses, and depones that the possessors of Flex had pasturage on the Common in the year seventeen hundred and fifteen and all the thirty-five years the Deponent was in Closses ; depones while he was in Closses he herded his own sheep and cattle, except his lambs, which he spained with the Town's Herd, and paid him a penny or threehalfpence a head for taking care of the lambs, as the Deponent and Herd agreed, that is, for herding of them, not for their grass ; depones his stock of sheep at Closses was commonly between twenty and thirty ; he thinks he never had so many as forty, tho' he might have kept as many more on the Common as he pleased, either herded by himself or under the care of the Town's Herd ; and the Deponent since he left Closses was Cowherd to the tenants of Whitechester one summer and two springs, and pastured

their cows partly on the Common and partly on Whitecheater ground, and at the present time he is Cowherd to the tenant of Newbigging, and pastures the cows on the Common and on the property ground, and for these three years last mentioned the Common has been used in the same way by all the contiguous tenements as for the former time he has deponed on ; and depones the said Robert Robson, the deponent's master, in seventeen hundred and fifteen was a Burges of Hawick.

WILLIAM HUDD, *Weaver in Hawick Shiels, Witness for the Pursuer*, aged sixty-six, married, depones he has lived in Hawick Shiels and followed his business of a Weaver for forty years past, and was six years in Whitechesters before he came to Hawick Shiels, and for these forty-six years he knows that the tenants of Hawick Shiels, Over and Neither Southfield, Newbigging, Alton Crofts, and Whitechesters pastured their sheep, cattle, and horses on Hawick Common without any interruption, and for all that time he, the Deponent, got his elding, peat, and turf from the mosses and muirs in the Common, and diviots for his houses, and the tenants and other possessors of the farms got their elding and diviots from the Common also, and the Deponent never heard of any interruption ; depones, as he lived on the west end of the Common, he never had occasion to know particularly the use and privileges that the tenants on the easter skirts of the Common or to the eastward of the Common had ; depones the tenants of Raesknows sent sheep to the Common in summer, but he knows not how they were herded, and the possessor of Hilliesland also sent sheep to the Common, but how they were herded he knows not ; depones while Hawick Shiels was in the hands of five tenants, these tenants were in use to take in sheep and sometimes black cattle belonging to persons who had no right in the Common, and put them to pasture in the Common, for which the tenants received grass mail, which taken in sheep and cattle pastured along with the tenants' own herded by their herd ; and he, the Deponent, put his sheep to pasture with the tenants' sheep, and paid them grass mail for the same ; depones he does not know particularly how the several herds in the Common managed among themselves, for his business confined him to the house, which

last answer was on a question on the part of the Town of Hawick ; and, being further interrogated for the Town concerning the breaking of the peats, depones he knows nothing of that matter but by hearsay.

WILLIAM HALL, *Herd in Aikerknow; Witness for the Pursuer*, aged eighty-seven, a widower, depones he was twenty-four years Herd at Winnington Rigg, belonging to the family of Stobs, and two years after he left Winnington Rigg he came to Longflat, a part of the Farm of Nether Southfield, as, William Grieve, the tenant's Herd, and continued in his service for eight years, and it is fourteen or fifteen years since he left the Longflat, and since that time he has lived at Dodburn and Aikerknow, so that for forty-eight years past he has lived on the confines of Hawick Common, except two years ; and all the time he lived at Winnington Rigg, and ever since that time, he knows and is sensible that the Duke of Buccleugh's tenants of Meikle and Little Whitlaw, Hawick Shiels, Over and Nether Southfield, Newbigging, Alton Crofts, Raesknows, Whitechesler, Gowdiland, and Crumhaugh, constantly pastured their sheep, black cattle, and horses on Hawick Common without interruption, only they fled to another part of the Common to make way for the Town of Hawick's hirsell when it came near the hirsells of any of the other farms he has mentioned, because they did not chuse to mix their gear with the Hawick hirsell ; and depones, for all the time he has mentioned, the Duke of Buccleugh's tenants in the farms aforesaid and their coatters did cast peats in the mosses on the Common, and turf on the muir parts, for the use of their families, and diviots on the Common for the use of their houses ; and depones, on an interrogation for Thomas Turnbull of Fenwick, that the tenants and possessors of Fenwick and Closses had the like use and privileges of and in the Common as the Duke of Buccleugh's tenants before specified, and the possessors of Flex had the like use and privilege ; and depones Allanhaughmiln, to the best of the Deponent's remembrance, was not possess by itself, but along with Raesknows in the time he has mentioned, and, being possessed with Raesknows, he understands it had the like privilege with the principal part of the farm ; and, being interrogate on the part of

the Town of Hawick, depones he remembers one William Grieve, now deceased, tenant of Allanhaughmiln, who had no share of Raesknows. It is a long time since that William Grieve went out of it; he cannot say how many years. And there was another William Grieve, also tenant of Allanhaughmiln, who had no share of Raesknows that the Deponent remembers; but both of them got diviots of the Common for the use of the miln and houses. Depones the herds of the hirsels belonging to the Duke of Buccleuch's tenants did not flee their gear from one another as they did from the Hawick hirsel. They generally kept their hirsels near their several lands, which kept their hirsels from mixing, and when the hirsel of the Town of Hawick came to these parts of the Common the tenants' herds fled their hirsels and allowed the Town hirsel to come next the corn side, and none of the tenants' hirsels durst stand before the Town's hirsels for mixing; and, being interrogate if the Town's Herd did not hound the Duke's tenants' hirsels, depones he never saw it.

WALTER SCOTT, in *Langlands*, *Witness for the Pursuer*, aged sixty and upwards, married, depones he came to serve at Gowdielands in the year seventeen hundred and fifteen, and his first master was John Elliot, tenant of Gowdilands and Crumhaugh, and he continued to serve different masters at Gowdielands, except five years, till last Whitsunday. His service was always in the way of Plowman. That while he lived at Gowdielands he knows his master sent their eild sheep with a herd to keep them on Hawick Common, and they sent their lambs to spain on the Common along with the eild sheep, and after the ewes were eild the eild sheep and lambs were brought off the Common into the ewe pasture; depones the tenants of Hawick Shiels and Over and Nether Southfield kept their eild sheep on the Common till the lambs were spained, and then the eild sheep and lambs were brought in and joined with the ewe hirsel after the ewes were eild, and they did not go on the Common afterwards unless a while in the middle of the day, and this was the general custom of the Duke of Buccleugh's tenants on the muir edge; and depones the Duke of Buccleugh's tenants and their coatters got their elding from the Common and diviots for the

use of their houses ; depones the Duke's tenants and their herds never stopt the Town of Hawick's hirsell in its progress thro' the Common. They always turned off or aside and allowed the Town's hirsell to pass on, and the tenants' hirsell turned in behind them.

JOHN CLAPPERTON, in *Newbigging*, *Witness for the Pursuer*, aged sixty or thereby, married, depones he has lived on the confines of Hawick Common for thirty-six years past and upwards. His first place of residence was at Closeses, and then he went to Sea Croft, a part of Newbigging Farm, where he has lived ever since, and he has all along been a day labourer, and from time to time employed by the tenants and others in the neighbourhood in different kinds of work, particularly in casting of peats, turfs, and diviot. And when he was so employed he came to see that the Duke of Buccleugh's tenants on the confines of Hawick Common, and near to it, had the privilege, at least did cast peats, turf, and diviot in the Common for the use of their families and houses, particularly the tenants and dwellers in Meikle and Little Whitlaw, Hawick Shiels, Over and Nether Southfield, Newbigging, Alton Crofts, Raesknows, Whitcheater, Gowdilands, and Crumhaugh, and he observed and knows that the tenants of all these farms had their beasts pasturing on the Common, they lay to it, and had passage out and in ; and, being interrogate for Thomas Turnbull of Fenwick and John Boyd of Flex, depones the possessors of Fenwick, Closeses, and Flex had the same privilege in the Common as the Duke of Buccleugh's tenant above specified ; and, being interrogate on the part of the Town of Hawick, depones the herds of the hirsells belonging to the tenants aforesaid always fled and gave place to the Town's hirsell in its progress thro' the Common, and after the Town's hirsell was passed the tenants' hirsell fell in behind them, and he never knew the herds of any of the tenants yield or give way to any other hirsell than the Town hirsell.

JAMES ROBSON, in *Templehall*, *Witness for the Pursuer*, aged fifty-six, married, depones he came to be Herd along with his father, to Walter Soot in Newbigging at Whitsunday, seventeen hundred and twenty-six, and were with him for six years ; and after

that he was two years Herd in Raesknow, and was two years Herd in Aikerknow and Winnington Rig, part of Stobs estate, which march with Hawick Common ; depones when he was Herd at Newbigging he and his ffather pastured their master's sheep on Hawick Common without interruption, only they gave way to the Town hirsel of Hawick, and the black cattle of Newbigging pastured on the Common every day whenever they, the herds or their masters, had a mind, and never were interrupted ; and one of the two years the Deponent herded at Raesknow he kept his master's eild sheep on Hawick Common from the time of the lambs spaining as long as they thought proper, which sheep of Raesknows were on the Common night and day, for they had no communication from the ffarm with the Common, but he drove the sheep through the grounds of Newbigging or Whitchester, he does not remember which ; and depones while he was Herd in these two ffarms he got his elding, peat, and turf from Hawick Common, and his masters and their coatters got their elding in the same way, and also got diviots for the use of their houses off the Common ; and depones while he herded on the Common the Duke of Buccleuch's tenants of Hawick Shiels, Over and Nether Southfield, Alton Crofts, Whitchester, Gowdielands, and Crumhaugh had the like privileges on the Common for pasture, peat, turf, and diviots as the two ffarms the Deponent herded in, and he never knew of any interruption further than their herds giving way to the Town of Hawick's hirsel, as he, the Deponent did ; and further depones, with respect to Fenwick and Closses, that the possessors of these ffarms had the same use and privileges in the Common as the Duke's tenants he has mentioned ; and, being interrogate on the part of the Town of Hawick, depones when he was Herd in Newbigging one Mungo Armstroug was Town Herd of Hawick, who kept the best of dogs, and if the Deponent's hirsel or any of the other tenants' did not flee and make way for the Town's hirsel at its first appearance, Armstrong used to hound the Deponent's and the other hirsels very severely, never so far off, tho' not off the Common, for the Deponent shored the dogs before they drove the sheep out of the Common ; and depones Walter Scot, his master, saw this hounding at times,

and told the Deponent he was a Burges of Hawick and had as good right to the Common as the Town's hirsell, and directed the Deponent not to flee before Armstrong, which the Deponent for some time attempted, but he was obliged to yield and flee as he had done formerly, as every other herd did.

WILLIAM LEITHHEAD, in *Whitlaw*, *Witness for the Pursuer*, aged fifty-five, married, depones he has lived at Meikle Whitlaw and Flex from his infancy, and was a hired servant from year to year, first to drive, and afterwards to hold the plough; and depones as long as he remembers, and down to the present time, his masters and the tenants of Meikle and Little Whitlaw have pastured their whole stock of sheep, nolt, and horse on Hawick Common without interruption, and the tenants and their coaters were in use to get their elding, peat, and turf from the mosses and muirs in the Common, and diviots from the Common for the use of their houses also without interruption; and depones he remembers when John Glaidstones was Laird of Hilliesland and lived there, and at that time his beasts were often sent to pasture on Hawick Common, and he never heard of their being interrupted, and the way Hilliesland's beasts were put to the Common was down the Iver Burn, and the Deponent has seen him cast and lead his elding of the Common, and he has also seen him cast and carry diviots of the Common; and depones he has seen the tenant of Allahaughmiln cast peats, turf, and diviot at different times and carry them off the Common; and depones for the whole time he has mentioned the tenants of Flex had the same use and liberty of the Common for pasture, elding, and diviots that the tenants of Whitlaw had; and being interrogate for the Town of Hawick, depones he knows that the Herds of Whitlaw and Flex were in use to flee with their hirsell before the Town hirsell of Hawick and make room for that hirsell passing, and if the hirsells were not quite out of the way of the Town hirsell as it was acoming, he has seen the Town's Herd scare and haste them out of the way with his dogs.

PROOF FOR THE TOWN OF HAWICK,
16 OCTOBER, 1767.

JOHN DOUGLAS, *Indweller in Hawick, Witness adduced for the Town of Hawick*, aged ninety-three, married, depones he has lived at Hawick and within a mile of it for seventy years past; that about the year seventeen hundred and ten, to the best of his remembrance, Walter Scot, called "Crooked Watt," was Town Herd of Hawick, and had orders from the Magistrates to weir the Common and keep off the beasts belonging to the Lordship, that is, the beasts belonging to the tenants on the confines of the Common, and the said Walter Scot observed the orders he got in such manner that the tenants' beasts got no rest on the Common. And at that time Simon Miller and Walter Scot, tenants in Hawick Shiels; James and Walter Scott, tenants in Nether Southfield; John Goodfellow and William, his son, in Over Southfield; Robert Scot, tenant in Newbigging; Walter Riddel, Miller in Allanhaughmiln, called "Dustyfoot;" John Graham, in Raesknows; Alexander Thomson, in Whitchester, and John Bell, there; Walter Scot, in Alton Crofts; and Robert Scot of Fenwick, called Clack, gathered themselves in a club* and came in and drunk the Magistrates of Hawick, and got liberty from the Magistrates to rest their beasts on the Common from nine in the morning to twelve mid-day, as the Deponent heard say, and after this time, and agreeing with the Magistrates of Hawick, these tenants' beasts got rest on the Common from nine to twelve, as he has said, and after this toleration was granted, these tenants rave their own ground and oppressed the Common, as is to be seen to this day, in so far that the tenants

* We find no reference to this club in the town books of this period, but from an entry in the treasurer's cash book in 1744 the Town Council appear to have borrowed twelve pounds from "the club in Hawick" towards paying the workmen for building Teviot bridge. The Farmers' Club was not instituted until 1776.

who could not keep above four score of sheep on their several ground kept fifteen score by the help of the Common, and at the present time the tenants of Whitlaw keep twelve score, and tenants of Flex ten score, who could keep no sheep within themselves unless they were tethered, and there was one Thomas Stevenson, who came from Humbleknow to be tenant in Little Whitlaw, who kept betwixt six and seven score of sheep depending upon the Common, but the Town Herd of Hawick hounded, scattered, and destroyed said Thomas Stevenson's sheep, till he was obliged to make sale of what was left, and gave up his farm ; depones there was one James Borthwick, Herd in Hawick Shiels for fourty years, and this man about thirty-one or thirty-two years ago happened to mis-time himself and be sleeping on the Common after one o'clock, when Mungo Armstrong, the Hawick Herd, coming his round with the beasts, came up to him in a passion and davered him with a staff, and hounded James Borthwick's gear with two doggs off the Common down the corn and meadow, and the Deponent thinks this happened some time in the month of July, and that day the Deponent was filling peats in the west end of Winnington Moss about the Black Grain, and the Deponent found fault with Mungo for felling the man sleeping, but Mungo was a passionate body and would not stay to speak to the Deponent ; depones while Walter Gladstains,* Town Clerk of Hawick, lived, the Common was well taken care of, for he supported the Herd in defending it, but since his death there was never one to support the Herd, and the Common has been ten times worse used since than it was before, and he has

* This was Walter Gladstains, the second, who succeeded his father as Town Clerk in 1718, and held that office till his death in 1732. His father, Walter Gladstains, the first (son of Lieutenant Francis Gladstains, slain at the battle of Auldearn in 1645), was Town Clerk for forty-five years, from 1673 till his death in 1718. Walter's (the second) son, John, was Town Clerk for twenty years, from 1763 till his death in 1783. He was succeeded by his nephew, James Inglis, who held the office for twenty years, till 1803. John

heard Mungo Armstrong complain after Walter Gladstains' death that the Duke's tenants got their will, for there was none to assist him, the Herd, in defending the Common ; and depones at all times the herls of all the tenants on the confines of the Common fled their gear before the Town's hirsel and made way for it, and if any of them were in the way of the Town's Herd's hirsel they were hounded off the Common down through the nearest several ground, whether corn, grass, or meadow, and that is the custom to this day ; depones he has been witness to the Common-Riding of Hawick by the Magistrates and Inhabitants for three score and ten years past, which Riding was generally upon the last Friday of May, and on this day of the Common-Riding all the neighbouring tenants' beasts fled off the Common or kept out of sight untill the Cornet and his company came into the Town, and there was proclamation made that day at the Callknow discharging them with their beasts to trouble Hawick Muir ; and, being interrogate for Robert Oliver of Burnflat, depones the tenants of Burnflat had the same use of the Common as the Duke's tenants, and one Walter Paterson, laird of Burnflat, and tenant of a quarter of land in Hawick, kept five score of sheep or more with the help of the Common, for he had nothing to feed them on within himself but scars and what they got on the said quarter of land ; and, being interrogate for Robert Soot of Horslyhill, depones the tenants of Weensland put any beasts they liked to the Common, and pretended they had as good right as the Duke's tenants ; and depones the tenants of Weensland, after the braird in the spring, sent their eild sheep to the Common under the charge of a herd of their own untill the lambs were spained, that is

Gladstains left a son, James, who was proprietor of the property, No. 80 High Street, now belonging to Hawick Liberal Club. His sisters, Christian Gladstains, relict of Walter Richardson, manufacturer at Whiskeyhouses, and Ann Gladstains, served heiresses to him before the Bailies of Hawick in 1808, and in 1809 sold the property. This was probably the last ground owned by the Gladstains in Hawick—see note p. 149.

about the tenth or eleventh of June, and then the lambs were put to the charge of the Town Herd of Hawick, who had liberty of taking in souns, and continued on the muir untill the stubble foggage; and the tenents of Weensland were well-loved by the Town, got both peat, turf, and diviot off the Common, and this has been their practice for twenty years past; depones the sheep the tenents of Weensland put to the charge of the Hawick Herd they paid ten groats a soun for; and, being interrogate on the part of the Duke of Buccleugh, depones he was not present when the Duke of Buccleugh's tenents before named drunk the Magistrates, and got liberty from them to rest their beasts on the Common from nine to twelve, but John Goodfellow, the tenent of Over Southfield, who married a wife when he was ninety years old, and whose word the Deponent could depend on, was present and told the Deponent what he has deponed, and Robert Scott, in Newbigging, and John Graham, in Raesknows, gave the Deponent the same account the next day after; depones old Falnash was the Dutcheas of Buccleugh's Chamberlain in the year seventeen hundred and ten, and the Deponent heard James Scot and the other tenents of Hawick Shiels say that they complained to Falnash of their gears being disturbed on the Common by the Hawick Herd, and that Falnash had given them orders to lay off a piece of their own ground to keep their gear on, for he could not hinder the Hawick Herds prosecuting them, and he bid the tenents agree with the folks of Hawick; depones he is a Burgess of Hawick, but has no property in the Town of Hawick, *causa scientie patet*, and this is truth, as he shall answer to God, declares he cannot write for his sight has failed him for ten years past; and, being interrogate, depones he is on the Poors Roll of Hawick, and gets a supply of tenpence or a shilling a week, and that has been his situation for six or seven years, and he is further supplied by his son, which is paid him by John Glaidstanes, Writer in Hawick, who has also orders from his son to bury him decently, and this is also truth, &c.

WILLIAM AITKEN, *Carrier in Hawick, one of the Witnesses adduced for proving the Limits of the Common, and now adduced for the Town of Hawick, against whom the Pursuers object that he is*

not a habile Witness, in respect he is both a Burgess of Hawick and has a property in the Town, and consequently must be a gainer or loser in the event of the cause.

THE COMMISSIONERS ADMIT THE WITNESS, RESERVING
THE IMPORT OF THE OBJECTION TO THE COURT.

The said WILLIAM AITKEN, being of new solemnly sworn, &c., depones he is a Burgess of Hawick, and had the property of a house which he now liferents, the fee being disposed to his son-in-law, Bailie Robert Scot, for the use of his son William, his daughter, Bailie Scot's wife, having paid the price of the house; depones sixty years ago Gilbert Elliot was tenant in Nether Southfield, who broke Hawick Common by plowing a part of it, which the Deponent saw at the Common-Riding when the Magistrates and other persons at the Common-Riding potched the ground he had plowed, and was then sown that he might not reap the crop of this. Gilbert Elliot complained to Falmash, the Dutchess of Buccleuch's Chamberlain, at the time, but he gave Gilbert Elliot no protection, but bid him go and agree with the people of Hawick, for when he set him the farm he did not set him any part of the Common either for plowing or pasture; depones at said Common-Riding the Magistrates and people of Hawick showed their resentment against Gilbert Elliot for breaking the Common by hounding his gear that day more than they did the other tenants', and at another Common-Riding long after that there was a fold dyke built on the Common by the possessors of Fenwick, which dyke was levelled by order of the Magistrates and rendered useless, and the tenant of Fenwick was charged before the Magistrates to answer for the incroachment; and depones at riding the Common yearly the riders were in use to hound and drive out of the Common all the horse, nolt, and sheep belonging to the tenants on the confines of the Common that were in view or sight of the Common riders; and depones none of the contiguous tenants found fault with the Common riders tho' they went thro' their best grass, because they were benefited by the Common; depones when the Inhabitants of Hawick took their horse

to the Common on Sundays they let them loose, and the horses went over the Common dyke to the better grass on the lands of Gowdielelands and Fenwick and Alton Crofts, and tho' the herds of these farms were present they did not disturb the Hawick horses, as they allowed start and oerloup, and he, the Deponent, has sit down with the Herds when this happened; depones, at the Common-Riding all the Burgesses of Hawick were called over by name from a Roll at the Callknow, and if any of them were absent the Magistrates might have fined them, and after the Roll was called intimation was made by the Magistrates that if any incroachment was made on the contiguous properties by that day's riding of the Common they might apply for redress to the Magistrates within fourty days; depones that part of the Common, from Hawick Moss Brow to the Reedwell Knows, was generally kept for the Hawick beasts, and if any of the neighbouring tenants' beasts came to that part of the Common they were hounded off. The part of the Common from Hawick Moss Brow on the east end of the Common to the Reedwell Knows comprehends that part of the Common that lies south and north the whole breadth of the Common as far west as Reedwell Knows, and as to the parts of the Common that lay to the westward the Hawick beasts seldom touched it, because of the distance, unless when they were leading their peats or turfs; and as to that west part of the Common the neighbouring tenants, viz., of Hawick Shiels, Over and Nether Southfield, kept it as a fence for their own beasts, but whenever the Hawick folk came that way they were vexed at it, and hounded these tenants' beasts oft enough, and whiles no when out of their sight off the Common; and depones what he means by these tenants keeping that west part of the Common as a fence is that they kept it as if it had been their own ground, but the Hawick people hounded, as he has said, notwithstanding tho' these tenants never hounded the Hawick beasts when they came there; and, being interrogate for Horselyhill, depones the tenants of Weensland were in use to put beasts to the Common to the care of the Town Herd, and they paid him a greater price or wage for herding than the Hawick people did, and in the summer season these tenants of Weensland had sheep on the Common under

the care of their own herd till the lambs were spained, and they had the privilege of the peat, turf, and diviot in the Common, and the possessor of Burnflat or Haggieshall had pasturage on the Common for all their beasts, which went more on the Common than on their property ground, and had the benefit and privilege of peat, turf, and diviot on the Common ; depones the ministers of Hawick, of whom the Deponent remembers seven, had always the same liberty and privilege on the Common that any of the Inhabitants of Hawick had, by pasturing their horses, cows, and sheep, if they had any, and casting peata, turf, and diviot ; and the minister had the tythe of lamb, foal, and calves brought forth on the Common, viz., fourpence for a lamb, one shilling for a calf, and one and eightpence for a foal, meaning these belonging to the Inhabitants and Tenents of the Town of Hawick and East and West Mains, not from the Duke of Buccleuch's other tenents or these of Flex or Fenwick, but from the tenents of Weensland, Hilliesland, Burnflat, and Weensland Miln ; and depones the tenents of the piece of land belonging to Mr Laurie, present minister of Hawick, were always Burgesses, and had privilege of the Common ; and depones the tenents of Mr Patrick Cunningham's lands, whereof a part now belongs to Bailie Turnbull, and Bailie Turnbull's lands called Greenwynd, and the garden and ground possess by Andrew Turner, and the wheat hole possess by William Turner, have always been occupied by Burgesses of Hawick, and enjoyed the privileges of the Common, and the lands of Birseltoun belonging to Robert Oliver of Burnflat have been so occupied and enjoyed the like privileges ; and, being interrogate on the part of the Duke of Buccleugh, depones he was not present with Gilbert Elliot when he complained to Falnash of the Town's potching the part of the Common he had plowed and sown, and he, the Deponent, knew Gilbert Elliot and his ffather before him tenents of Nether Southfield, and living there ; depones it is sure enough that the Bailies of Hawick fined Gilbert Elliot for breaking of the Common, for he came in the Bailies' will, and Falnash told him to do so or they would ruin him, tho' the Deponent was neither present at his being fined nor did he hear Falnash say as he has deponed ; depones the ground of Hilliesland does not adjoin to the Common,

the Laird of Hilliesland was a Burges of and had several houses in Hawick, and the possessors thereof at this time are also Burgesses of Hawick ; depones what he has said concerning Falnash's advice to Gilbert Elliot, and his submitting to the Magistrates and being fined was publickly known and spoke of by every person at the time.

WILLIAM PATERSON, *Indweller in Hawick, Witness adduced for the Town of Hawick*, against whom the Doers for the Duke of Buccleugh made the same objection they offered against William Aitkin, with this further objection that William Paterson is not worth the King's unlaw being on the Parish Roll or Poors List.

THE COMMISSIONERS RECEIVE THE WITNESS, RESERVING
THE CONSIDERATION OF THE OBJECTION TO THE
COURT.

The said WILLIAM PATERSON, aged seventy-two, married, depones he is Burgess of Hawick, but has no property in the Town, and has been on the Poors Roll for several years past and gets a weekly supply of tenpence, depones his ffather was gardener to Gideon Scott of Falnash, when he lived in Fenwick, that is his ffather lived at Fenwick which was Falnash's property, and Falnash lived at Broadhaugh upwards of thirty years ago if not forty, and depones his father was Falnash's herd and kept the sheep and nolt of his ffarms of Fenwick, half of Gowdielands and Alton Croft, he kept a servant for the sheep and the Deponent herded the nolt and both sheep and nolt pastured on Hawick Common, but they always fled before the Town's hirscl on to the property ground and this daily as the Town's hirscl came in the way, and after the Town's hirscl was past they did not confine their beasts to the property land but gave them their liberty, if they went to the Common they did not turn them back ; and depones when the beasts belonging to the Town of Hawick came a little over the march of the Common on to the ground possessed by Falnash, the Deponent and the other herd did not disturb them or turn them off for they considered it as start and oerloup, and the pasturage Falnash's sheep and cattle had on

the Common, he, the Deponent, understood in the same way to be start and oerloup, for the Common Herd might have hounded them if he had liked but he never did it as they never gave him occasion but turned out of his way, and the Deponent looked on the Common to belong to the Town of Hawick, and any pasturage the sheep and cattle under the Deponent's ffather's charge had in the Common was a favour from the Town of Hawick, and he, the Deponent, has heard Gideon Scot of Falnash say as much and instruct the Deponent's ffather and his servants no way to hurt the Town of Hawick's beasts; depones he remembers Gilbert Elliot, tenent in Nether Southfield, and that one year he broke a part of the Common by plowing on the edge of it and sowing what he plowed, but he did not reap the crop, it was eat up, and the Deponent heard that Gilbert Elliot complained to Falnash who bid him go and agree the matter with the Magistrates of Hawick for they would ruin him if he did not for he would not protect him; depones after that time, when the Deponent had his peats casten from Whitcheater Moss, the tenents of Over and Nether Southfield had their sheep pasturing near the moss and did not keep them from among the Deponent's peats on which the Deponent hounded the sheep very sore, and if the herds had not submitted he believes he would have driven the sheep into the moss; depones the tenents complained to Falnash of this hounding, as Falnash told the Deponent the first time he saw him after and that the answer he had given to the tenents was he could do nothing for them; and depones he has heard that the tenents of Over and Nether Southfield grassed sheep to the Town Herd of Hawick and that they gave him cheese by the way of a bribe to keep the Town's hirsle off their boundary; depones he does not remember who was the Town's Herd when this was said; and being interrogate on the part of the Duke of Buccleugh, depones his father was eighteen years gardner to Falnash and had his herding and the Deponent was nolt herd the last ten of these years, and while the Deponent was nolt herd he knows that the tenents of Raesknaws and Hilliesland sent their eild sheep to the Common when the lambs were spaining, where they staid night and day under the charge of their own herds, because these two places do

not lye on with the Common ; and depones while his ffather lived at Fenwick they had all their elding, peat, and turf from the Common, what diviots they needed they cast at home, the Common being at too great a distance ; depones he does not remember in what year the report he heard of Falnash's directing Gilbert Elliot to agree with the Magistrates of Hawick happened, but he thinks it was about two years before Falnash's death ; depones he was living in Hawick when he heard that the tenents of Over and Nether Southfield grassed sheep and gave cheese to the Town's Herd and it's upwards of twenty years ago, and at that time Walter and James Soot were tenents in Nether Southfield and two Good-fellows were tenants in Over Southfield.

ROBERT HOBKIRK, *Indweller in Hawick, Witness, adduced for the Town*, aged fifty-two, married, depones he was born in Hawick, and forty years ago he was one year nolt herd to Thomas Keadzie in Over Southfield, and the Deponent's ffather herded Thomas Keadzie's sheep at the same time, and the winter following that year he lived in Nether Southfield with his mother, and at different times he was herd in Gowdylands eight years since the seventeen hundred and thirty and two years, before 1730 he herded at Flex, and then he was half-a-year with his ffather at Whitlaw, and he did not live near Hawick Common from that time till the year seventeen hundred and fourty-nine, since which time he has lived in and about Hawick, and fifteen years ago he was Town Herd of Hawick and kept their beasts on the Common five summers and four winters, and while he was Town Herd he had the charge of all the sheep, horse, and nolt belonging to the Inhabitants of Hawick, and for part of his wages he was allowed to take in on his own account sixteen soums from any other persons ; and depones while he was Town Herd he pastured his charge over the whole Common and every part of it, and if the other hirsels which pastured on the Common did not flee and make out of the way of the Deponent's hirsel in its progress through or round the Common he either sent his servant or went himself and hounded such hirsel by his dogs out of his way ; and depones while he was herd in Gowdielands betwixt the year seventeen hundred and

thirty and seventeen hundred and thirty-five, he is not positive in which year, one day when the sheep under the Deponent's charge were pasturing on that part of the Common called the Nipknows, a little to the north of Hawick Moss Brow, Mungo Armstrong, the Town Herd, came with his dogs when his hirsle was not in view and hounded the Deponent's sheep off the Common and a great way through the property land possessed by his master, and the Deponent run after Mungo Armstrong's dogs and beat them off either with stones or a stick, and crooked one of the dogs, and he minds that dog's name was "Company," and the next time Mungo Armstrong saw the Deponent with his hirsle on the Common which was then pasturing near Whitlaw Slap, Mungo Armstrong drove the whole of the Deponent's hirsle before him into his hirsle and kept them there, and the Deponent went home and acquainted his master that Mungo Armstrong had taken his sheep from him, and John Elliot, his master, or Adam Hobkirk, the Deponent's ffather, who was John Elliot's principal herd, went and interceded with Mungo Armstrong and got back the sheep, he is not sure whether it was the Afternoon of the day he took them from the Deponent or the next morning ; and depones at other times Mungo Armstrong hounded John Elliot's sheep under the Deponent's charge off the Common, and further depones when the Deponent herded the nolt of Over Southfield, which was the first of his herding near Hawick Muir, when he was only nine years of age, by his ffather's orders he was to pasture the nolt down the one side and up the other of Lineart Moss but Mungo Armstrong, the Town's Herd, would not allow the nolt under the Deponent's charge to pasture there but hounded off the nolt with his dogs, and the Deponent's father, being by, run at the dogs and threw his staff at them and thereby overturned the dog, laid him on the braid of his back, and next morning after this Mungo Armstrong brought his whole hirsle of sheep and eild nolt and lay with them on the north side of the Lineart and next the march of Over Southfield until he eat up all the grass in that part and thereby wore in the sheep and nolt of Over Southfield so that they could not get to the Common for a part of that day ; and depones Thomas Keadzie, the tenent of

Over Southfield, went to Falnash, the Dutcheess of Buccleuch's Chamberlain, who lived at Broadhaugh, and complained to him of Mungo Armstrong wearing his sheep and nolt from the Common, and the Deponent heard his father or Thomas Keadzie say that Falnash told Thomas Keadzie that he had set him the farm of Over Southfield but not the Common of Hawick; depones while Mungo Armstrong was Town Herd he took particular care of that part of the Common from the east of the Reedwell Knows to the Craggy Burn near Hawick Moss Brow, the middle of the Common, and whenever any other hirsel than the Town's came towards that part of the Common he was sure to hound them off, and he continued to support the Town's right as long as Walter Gladstains lived, but after he died the Bailies of Hawick did not give him the like support for the neighbouring tenents came in and drunk with them, and further depones when he, the Deponent, was Town Herd he one day hounded the nolt of the farm of Turn belonging to the family of Stobbs off the Common, and next day George Fletcher, the tenent of Turn, sent a stronger man than the Deponent to keep his nolt on the Common and hinder the Deponent from hounding them, yet the Deponent did hound these nolt, and Robert Thomson, George Fletcher's servant, who was sent to keep the nelt, gript the Deponent and made the Deponent's own hands strike himself, that when the Deponent came into Town he went to complain of this usage to Bailie James Scot, but George Fletcher had got before him and was drinking with the Bailie when the Deponent came to complain, and the Bailie was so far from giving the Deponent any redress that he called the Deponent a litigious fellow and said what was his business to hound and abuse any honest man's beasts, and after this the Deponent had no heart to defend the Common as he got no redress when he complained of the tenent of Turn who had no right; and depones when he was Town Herd some of the beasts under his charge got in upon and eat some of the corn at Whitlaw, when Patrick Scot in Borthaugh and John Gladstains were tenents there, who did not complain or say much about that trespass, for if they had they knew the Deponent would have laid his hirsel to their side of the Common

and made it of little use to them and wore them in as long as he pleased, and if any of the other tenants had fallen out with the Deponent that was the way he would have got amends of them as it was in his power to lay his hirsel on any side of the Common he pleased, and wear their beasts in as long as he pleased; and depones he heard that the damage done to the corn at Whitlaw was comprised, and that Patrick Soot and John Gladstains paid the damage to the teinder and the thirder out of their own pocket, and there never was any demand made on the Deponent, and another time some of the horse under the Deponent's charge broke in through the growing corn and stouks of Newbiging where they did damage but the Deponent got them again without paying anything on that account, and that was certainly done for fear the Deponent should have wore them in with his hirsel; and being interrogate for Horslyhill, depones the tenants of Weensland sent their sheep to the Common under the charge of their own herd, and sometimes they had sheep there in the Deponent's charge which counted for part of the Deponent's soums, and he was paid by them as much as for strangers' sheep; depones while he was Town Herd he got notice that the tenant of Burnflat or Haggieshall had taken in some sheep to grass on the Common, and he acquainted the Magistrates of Hawick of it, who came out and caused those taken in sheep to be taken off the Common, and they told the tenant of Burnflat they would allow him to have no other sheep on the Common than his own, and thereupon these taken in sheep were put to the Deponent as part of his soums and he was paid for them accordingly; and being interrogate for the Duke of Buccleuch, depones he is sure whenever there was any friction between the Town Herd and any of the tenants bordering with the Common these tenants always came in and drunk with the Bailies, he cannot particularly mind every one that did so, but he knows besides the instance formerly mentioned, John Tait, tenant in Fenwick, who had differed from the Deponent, came and drunk with Bailie Kerr, who was present Bailie at the time; and being interrogate how he knows that any of the tenants came in and drunk with the Bailies in Mungo Armstrong's time, depones John Elliot, the Deponent's master, was one of the tenants

that came and drunk with the Bailies to get their favour to quash Mungo Armstrong's humour, and this John Elliot told the Deponent after he came home, and Mungo Armstrong was harder on John Elliot's gear the next day than he had been for some time before.

MUNGO ARMSTRONG, *Cooper in Hawick, Witness adduced for the Town of Hawick*, aged sixty and upwards, married, depones he has lived in and about Hawick for forty years past, excepting five years he was in the army, and when he, the Deponent, was a boy, before he was put to his trade, he lived with his father, Adam Armstrong, who was herd in Whitcheater for seven years, and two years in Alton Crofts, and two years in Gowdielands; and he, the Deponent, assisted his father in the herding, and while the Deponent assisted his father, if they were not ready to wear and turn off their beasts out of the way of the Town Herd of Hawick, he, the Town Herd, hounded them off wherever the beasts ran, whether through grass or corn; and on the Common-Riding day they kepted in their beasts on their own ground till the Common-Riding was over, and then they put them on to the Common; depones there is a piece in the middle of the Common from the east end of the Reedwell Knows to Willies Struther foot from east to west, and from the road that leads to Lineart Moss on the north side of Crawstruthers to the Racerigg from north to south, and depones Willies Struthers foot is within a wi bit of Hawick Moss Brow, which piece in the middle of the Common the Town Herd of Hawick particularly kept for the pasture of his hirsel, and hounded the sheep and cattle of any of the neighbouring tenents that had pasturage in the Common off that part whenever he saw them on it.

FRANCIS TURNBULL, *one of the Town Officers of Hawick, Witness adduced for the Town*, against whom the Doers for the Duke of Buccleuch object that he cannot be received as a habile Witness because he is a Burges of Hawick, and consequently may be a gainer or loser in the event of the cause, and as he is one of the Town's servants he must be under the influence of the Magistrates and Town.

THE COMMISSIONERS RECEIVE THE WITNESS, RESERVING
THE CONSIDERATION OF THE OBJECTION TO THE
COURT.

The said FRANCIS TURNBULL, aged sixty-six, married, solemnly sworn, purged of partial counsel, and examined, depones he is a Burgess of Hawick, but has no property, and he is one of the officers of the Town appointed by the Magistrates, and been in that office for thirty-three years past, and attended in that character at the Common-Riding all these years, and at the Common-Riding any other beasts that pasture on the Common than these belonging to the Burgesses are kept off the Common, at least out of sight of the Common riders ; depones Mungo Armstrong, who was Town Herd when the Deponent was made an officer and for several years after, came in and complained to the Magistrates that he could not get the Town's hirsel free pasturage on the Common for the tenants of Whitcheesters, Alton Crofts, Fenwick, and Gowdelands would not keep their beasts out of his gate, and the Bailies ordered the Deponent and John Stewart, his fellow officer, to go out and bring in the gear of these tenants, and he and said John Stewart did go out and bring into the Loan end, next the West Port of Hawick, sundry black cattle belonging to these tenants. They did not bring any of their sheep off the muir because they had not room to put them if they had been so detained ; depones, when they brought the black cattle to the Loan end, they sent in the herd's servant to acquaint the Bailies the cattle were at the West Port, and John Elliot, tenant in Gowdelands, who owned a part of these cattle, came into Hawick and spoke with the Bailies, and the Bailies sent a written order to the Deponent and his neighbour to give up the cattle, and they were accordingly drove back by some herd boys ; depones he cannot condescend on the year when this happened, but thinks it might be about ten years after he was made Town Officer, and he does not remember the names of any of the tenants in the farms he had mentioned, except John Elliot in Gowdelands, *causa scientia patet*, and this is truth, &c. ; and further depones on Mungo Armstrong's complaints, the Deponent and his neighbour had orders from the

Bailies to bring in the beasts belonging to the tenants in the foresaid farms at other times than the time he has mentioned, when they made the orders effectual, and at these other times they did attempt driving in the cattle, but the herds that had charge of them, or their boys, prevented their getting them brought in by hounding the cattle with their dogs; and being interrogate on the part of the Duke of Buccleuch, depones he has not the written order the Bailies sent him to give up the cattle he brought into the town with him, and gave it back to the Bailies, viz., Bailie James and Bailie John Scot.

GEORGE RICHARDSON, *Indweller in Hawick, a Witnes adduced for the Town*, against whom the Doers for the Duke object that he is an inhabile Witnes in respect, he is a Burgess of Hawick, and in possession of a house rent free under his son in the town, and consequently may be a gainer or loser by the cause.

THE COMMISSIONERS RECEIVE THE WITNESS, RESERVING
THE CONSIDERATION OF THE OBJECTION TO THE
COURT.

The said GEORGE RICHARDSON, aged sixty-one, a widower, depones James Pursell, the Deponent's uncle, dispooned a house in Hawick to James Richardson, the Deponent's son, and his son allows the Deponent to possess a part of that house rent free, and he, the Deponent, is a Burgess of Hawick and has lived in Hawick all his time, unles while he was a boy he was at service; and depones that he has been at the Common-Riding of Hawick every year since he could ride a horse, at the Common-Riding they were in use to see that nothing was wrong about the Common, and rectify what they saw amiss, and one year there was a dyke on one side of a fauld, built within the edge of the Common at the march with Fenwick, at which the Common riders made a sprawl and brought in the dyker, whose name was Archibald Elliot, at least they did prosecute him for encroaching on the Common, and he was obliged to give in a bond for one hundred pounds Scots not to do the like again, and he was put in prison for that transgression, and while

Archie Elliot was in prison it was a common report in the town of Hawick that the tenent of Fenwick had complained to Falnash, who lived at Broadhaugh and was proprietor of Fenwick, of the usage Archy Elliot met with, and the report was that Falnash should have said he had let the tenent Fenwick, but not Hawick Common ; depones Crumhaugh then lived at Fenwick, but he is not positive whether he was tenent or not ; depones on the Common-Riding day, for ordinary, the tenents on the skirts of the Common kept their beasts off the Common untill the riding was over, and if any of these beasts were seen on the Common edges they were hounded or drove off ; depones one time when the Deponent was on the Common, Mungo Armstrong, the Town's Herd, charged the Deponent to assist him and Francis Turnbull and John Stewart, the Town Officers, to drive in the cattle of Whitechester and some other cattle which were pasturing on that part of the Common called the west end of the little Bailie Hill, where Mungo Armstrong used to lair the black cattle under the charge in the middle of the day, to Hawick Loanhead, and Deponent did assist in driving said cattle to the Loanhead near West Port, and he, the Deponent, heard Mungo Armstrong say he would not give up these cattle unless he got shillings ahead for them, but whether he got or not the Deponent knows not for he left Mungo Armstrong and the cattle and one of the officers at the Loanhead ; depones he does not remember how long it is since this happened, but to the best of his knowledge it is thirty-one or thirty-two years ago ; and being interrogate for the Duke of Buccleugh, depones the Deponent's son has no other property in Hawick than the house he has mentioned and the yard at the back of it.

ROBERT SCOTT, *late Bailie of Hawick, Witness, adduced for the Town*, against whom the Doers for the Pursuer object, he is an inhabile Witness, first because he is a Burgess of the Burgh, secondly because he has a considerable interest in the town both as a proprietor of houses and land, and thirdly has been in office as one of the Bailies, and has been present and overhearing the examination of the witnesses all which they offer to prove instantly by his oath.

THE COMMISSIONERS RECEIVE THE WITNESS, RESERVING
THE CONSIDERATION OF THE OBJECTION TO THE
COURT.

The said ROBERT SCOTT, aged sixty-three, married, depones he is proprietor of several houses in Hawick and has no other property but the yards at the back of them, and he was four years one of the Bailies of Hawick, and it is now nine or ten years since he came off; depones on the Common-Riding day there is a proclamation made over the Cross of Hawick, what mosses are to be used for that year and how they are to be used, that is what of them are to be cast for peats, and in which of them they may make bakes, and at the Common-Riding in the year seventeen hundred and fifty-seven the order was that no bakes were to be made in the Black Grain of Winnington Moss, notwithstanding of which publick order the tenants of Hawickshiels, the Southfields, and Longflat did make bakes in said Black Grain, of which information was given to the Deponent and Bailie Thomas Turnbull, elder, the other Bailie of the town at the time, and they, the Bailies, convened the Council on this information, having previously sent out some of the town to know the certainty of it, and it was unanimously resolved in Council that the bakes should be broke and destroyed, and that the Bailies and a party with them should put the order of Council in execution, and that evening a proclamation was made through the town by beat of drum warning the inhabitants to attend the Bailies next morning at four o'clock for that purpose. That accordingly the Deponent (Bailie Turnbull having gone for Newcastle) with a party of the inhabitants of Hawick went out to the Black Grain of Winnington Moss, where the bakes were made, where they broke and champed the bakes and threw many of them into the hole again; and depones when the Deponent and his party came to the Moss, William Grieve, tenant in Southfield, and Patrick Hume, tenant in Hawickshiels, were at the moss side, and either one or other of them offered the Deponent money not to break the bakes, which the Deponent refused, and put the order of Council in execution as he has said; and depones he knows that these tenants or their coatters who had

disobeyed the act of the Magistrates, intimate by their proclamation on the Common-Riding day, were brought before Bailie Turnbull for disobeying said act by making the bakes, and they made up the matter with Bailie Turnbull, and paid some small thing to defray the charge the town had been at in that matter, and William Hood, weaver in Hawickshiels, who was one of the persons that had made bakes, offered to pay the Deponent his share of the sum Bailie Turnbull had agreed for, but the Deponent refused it, and said to William Hood, as Bailie Turnbull had agreed with the rest he might go to him for the Deponent would have nothing to do with it; and being interrogate for the Duke of Buccleuch, depones he does not know who were the persons called before Bailie Turnbull, he cannot say whether William Grieve was called or not, for he, the Deponent, was not present, nor does he know what money Bailie Turnbull got or took from them; depones last Thursday the Deponent asked Bailie Turnbull in the Council what he minded about breaking of the bakes and what he did with the persons that were guilty, and Bailie Turnbull answered he minded nothing about it, *causa scientie patet*, and this is truth, &c.; and further depones he does not know by what authority the tenants and coatters that had made the bakes were brought before Bailie Turnbull, or how they were summoned, he supposes it might be by a Sheriff Officer or their own Town Officer.

CHARLES SCOTT, *Weaver in Hawick, Witness, adduced for the Town*, against whom the Doers for the Duke of Buccleuch object, he is a Burgess of Hawick and interested in the cause, and therefore cannot be received as a Witness.

THE COMMISSIONERS RECEIVE THE WITNESS, RESERVING
THE CONSIDERATION OF THE OBJECTION TO THE
COURT.

The said CHARLES SCOTT, aged forty-three, married, depones he was present in the later end of the month of June in the year seventeen hundred and fifty-seven, and was one of the party that went out with Bailie Robert Scott to the Black Grain to break and

destroy the bakes by the tenent and coatters of Hawickshiels, and before the bakes were wholly destroyed he, the Deponent, heard Patrick Hume, tenent in Hawickshiels, and several of his coatters, whose names the Deponents do not know, except Agnes Nixon, offered to Bailie Scott to submit to any fine the Magistrates should impose to save the bakes, but the offer was refused.

Thomas Waugh, Pror for the Duke of Buccleugh, craves the Commissioners may proceed to the execution of the other parts of the Commission by allowing the parties a proof of the different qualities of the ground which lies within the proven boundaries of the Common, and values of these qualities, by appointing a common and experienced surveyor or measurer to survey and measure the whole of the said Common, and make a map or plan of the same, distinguishing the different qualities into which it may be distinguished by the proof of the qualities, with an account of the extent, measure and value of the whole Common according to the qualities, and appoint a day for reporting, and, the same day, for the parties claiming or having interest, to produce proper certificates of their valued rent, and then to order the division in terms of the commission.

To which it was answered by Robert Elliot, agent for the town of Hawick, that the Commissioners had carried as much of the commission into execution as the commission itself implied, as it reserves to the town of Hawick to be heard on the purport of their titles produced in the act and commission, and to be produced at reporting, it were putting the parties to unnecessary trouble and expence to proceed to the execution of any other branch of the commission untill the Court give judgement on what it is to be pled for the town of Hawick against the division being at all carried into execution, and the answers that shall be made for the noble pursuer.

THE COMMISSIONERS, HAVING CONSIDERED THIS MINUTE,
REPORT THE CASE TO THE COURT AS IT NOW
STANDS AND APPOINT THEIR CLERK TO ANNEXT A
MINUTE OF THE PRODUCTION MADE TO THEM, THE

COMMISSIONERS, IN THE COURSE OF TAKING THE PROOF.

And there is in process produced by the said Henry, Duke of Buccleuch, the following writs referred to in the foressaid summons at his instance, viz. :—

1. Charter under the great Seal in favours of the said Duke, then Earl of Dalkeith, in the Lands and Barony of Hawick, and others, dated the 12th Feby., 1751.
2. Instrument of Sasine following thereupon, dated 22nd March, 1751, registered in the General Register at Edinburgh the 6th April thereafter.

There are in proces the following writs produced for the Magistrates and inhabitants of the town of Hawick, viz. :—

1. Charter by James Douglas of Drumlanrig in favours of the tenants and inhabitants of the said village, dated 11th October, 1537.
2. Charter of Confirmation thereof by Mary, Queen of Scotland, in favour of the inhabitants of Hawick, dated 12th May, 1545.
3. Extract of the said Charter of Confirmation from the Records of Chancery, dated said 12th May, 1545.

[Writs were also produced for Thomas Turnbull, elder, of Fenwick, Merchant in Hawick; Rev. James Laurie, Minister of Hawick (statement of his claim as Minister and also writs of his property at East End of Hawick); Robert Oliver of Burnflat, and John Boyd of Flex.]

With all which great avisandum was made upon the 16th December, 1767, and the term circumduced against the defenders for not proving ultra.

ALEXR. BOSWEL.

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PLATE I.

~PLAN OF HAWICK COMMON~



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